

MONTANA LEGISLATIVE HISTORY

Chapter 58 1999

Bill H 119 S _____ Original bill & history c

H. Committee on State Admin

Hearing Date(s) 1/15 _____ c

2/3 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on State Admin

Hearing Date(s) 2/15 _____ c

2/16 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

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Detailed Bill Information



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Bill Draft Number: LC0111

[Current Bill Text](#)

Bill Type - Number: HB 119

[Fiscal Note](#)

Short Title: Meet qualifications for tax-deferred qualified state retirement plans

Primary Sponsor: Douglas Mood

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 57

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	03/16/1999			
(H) Signed by Governor	03/15/1999			
(H) Transmitted to Governor	03/10/1999			
(S) Signed by President	03/09/1999			
(H) Signed by Speaker	03/06/1999			
(C) Sent to Printing	03/04/1999			
(H) Returned from Enrolling	03/04/1999			
(H) Sent to Enrolling	03/03/1999			
(S) Returned to House	03/03/1999			
(S) 3rd Reading Concurred	03/03/1999	50	0	
(S) Scheduled for 3rd Reading	03/03/1999			
(S) 2nd Reading Concurred	03/02/1999	48	0	
(S) Scheduled for 2nd Reading	03/02/1999			
(S) Committee Report--Bill Concurred	02/16/1999			(S) State Administration
(S) Committee Executive Action--Bill Concurred	02/16/1999	5	0	(S) State Administration
(S) Hearing	02/15/1999			(S) State Administration
(S) Referred to Committee	02/10/1999			(S) State Administration

(S) First Reading	02/10/1999			
(H) Transmitted to Senate	02/09/1999			
(H) 3rd Reading Passed	02/09/1999	95	3	
(H) Scheduled for 3rd Reading	02/09/1999			
(H) 2nd Reading Passed	02/08/1999	99	0	
(H) Scheduled for 2nd Reading	02/08/1999			
(H) Committee Report--Bill Passed as Amended	02/05/1999			(H) State Administration
(H) Committee Executive Action--Bill Passed as Amended	02/04/1999	17	0	(H) State Administration
(H) Hearing	01/15/1999			(H) State Administration
(H) Fiscal Note Printed	01/12/1999			
(H) Hearing Canceled	01/11/1999			(H) State Administration
(H) Fiscal Note Signed	01/11/1999			
(H) Fiscal Note Received	01/11/1999			
(H) Referred to Committee	01/04/1999			(H) State Administration
(H) First Reading	01/04/1999			
(H) Fiscal Note Requested	01/04/1999			
(C) Introduced Bill Text Available Electronically	12/21/1998			
(H) Introduced	12/21/1998			
(C) Pre-Introduction Letter Sent	12/17/1998			
(C) Draft in Assembly/Executive Director Review	12/17/1998			
(C) Draft in Final Drafter Review	12/16/1998			
(C) Bill Draft Text Available Electronically	12/15/1998			
(C) Draft in Input/Proofing	12/15/1998			
(C) Draft to Drafter/Edit Review (SAB)	12/14/1998			
(C) Draft in Legal Review	12/13/1998			
(C) Draft to Requester for Review	12/13/1998			
(C) Draft Back for Redo	12/13/1998			
(C) Draft in Legal Review	12/11/1998			
(C) Draft Back for Redo	12/11/1998			
(C) Draft in Legal Review	12/11/1998			
(C) Draft to Requester for Review	12/11/1998			
(C) Draft Back for Redo	12/11/1998			
(C) Draft to Drafter/Edit Review (SAB)	12/11/1998			

(C) Draft in Edit	12/10/1998			
(C) Draft in Legal Review	12/09/1998			
(C) Draft to Requester for Review	11/25/1998			
(C) Draft On Hold	11/10/1998			
(C) Draft Taken Off Hold	11/04/1998			
(C) Draft On Hold	10/13/1998			
(C) Draft Request Received	09/23/1998			

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Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Legislative Council		
Drafter	Niss	David	
By Request Of	Public Employees' Retirement Board		
Primary Sponsor	Mood	Douglas	

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Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Retirement (see also: Senior Citizens)		Simple	RETR
State Government		Simple	STGO

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Additional Bill Information

Probable Fiscal Note: Yes

Preintroduction Required: Y

Session Law Ch. Number: 58

DEADLINE

Category: General Bills

Transmittal Date: 02/24/1999

Return (with 2nd house amendments) Date: 04/01/1999

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Section Effective Dates

Section(s)	Effective Date	Date Qualified
Sections 1, 2, 4-6, provisions in 7 other than those providing for the making of contributions required to purchase service by employer pickup, 8-44, and 46	01-JUL-99	
Section 7 provisions providing for the making of contributions required to purchase service by employer pickup		On the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pickup method of making contributions provided in that section comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.
Sections 3, 45, and 47	15-MAR-99	

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FISCAL NOTE

Bill #: HB0119

Title: Meet qualifications for tax-deferred qualified state retirement plans

Primary

Sponsor: Douglas Mood

Status: As introduced

Sponsor signature	Date	Dave Lewis, Budget Director	Date
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Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:		
General Fund	\$140	\$140
Other (Retirement Trust funds)	\$69,200	\$0
Other (Social Security Agency Fund)	(\$35,800)	\$0
Revenue:	\$0	\$0
Net Impact on General Fund Balance:	(\$140)	(\$140)

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. There will be no significant changes to the Social Security settlement agreement.
2. The Social Security settlement agreement will be completed during fiscal year 1999. According to existing statute (Title 19, Chapter 1) once the settlement agreement is complete, the remainder of the agency social security fund will be turned over to the general fund. The board estimates after all payments due are paid from the social security agency fund the remainder of the fund will be \$440,000.
3. The Montana Constitution requires the retirement systems assets not be diverted and be held in trust to provide benefits for the members of the trust. Included in those payments is a reimbursement to the

Public Employees' Retirement System for the expenses incurred to settle with the Social Security Administration. The cost to settle the dispute with Social Security Administration is \$35,800.

4. Upon completion of the agreement, all Social Security records will be turned over to the Department of Administration and the cost of storing the records is estimated to be \$140 per year.
5. Any other administrative cost will be absorbed by the retirement system. The \$105,000 system changes will be funded within the board's current budget authority.

FISCAL IMPACT:

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
FTE		
<u>Expenditures:</u>		
Operating Expenses (Storage)	\$140	\$140
Equipment (System changes)	105,000	0
Transfers (Social Security Agency Fund)	35,800	0
Transfers (Retirement Trust Funds)	<u>(35,800)</u>	<u>0</u>
TOTAL	\$105,140	\$140
<u>Funding:</u>		
General Fund (01)	\$140	\$140
Other (Retirement Trust Funds)	\$69,200	0
Other (Social Security Agency Fund)	<u>\$35,800</u>	<u>0</u>
TOTAL	\$105,140	\$140
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
General Fund (01)	(\$140)	(\$140)
Other (Retirement Trust Funds)	(\$69,200)	0
Other (Social Security Agency Fund)	(\$35,800)	0

HOUSE BILL NO. 119

INTRODUCED BY MOOD D

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PUBLIC RETIREMENT SYSTEMS; AMENDING RETIREMENT SYSTEM-RELATED STATUTES TO COMPLY WITH INTERNAL REVENUE CODE REQUIREMENTS FOR TAX-DEFERRED QUALIFIED RETIREMENT PLANS; PROVIDING FOR WITHHOLDING AND EMPLOYER PICKUP OF AMOUNTS USED BY PUBLIC EMPLOYEES TO QUALIFY OR PURCHASE RETIREMENT SERVICE; REMOVING MENTAL HEALTH CORPORATIONS FROM THE ENTITIES THAT ARE ALLOWED TO JOIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; AMENDING SECTIONS 19-1-102, 19-1-202, 19-1-602, 19-2-303, 19-2-505, 19-2-602, 19-2-704, 19-2-706, 19-2-902, 19-2-908, 19-2-1001, 19-2-1006, 19-2-1007, 19-2-1010, 19-3-108, 19-3-318, 19-3-412, 19-3-503, 19-3-504, 19-3-505, 19-3-512, 19-3-513, 19-5-409, 19-6-101, 19-6-801, 19-6-803, 19-6-804, 19-7-101, 19-7-803, 19-7-804, 19-8-101, 19-8-904, 19-8-905, 19-9-104, 19-9-403, 19-9-411, 19-13-104, 19-13-403, 19-13-405, AND 53-21-204, MCA; REPEALING SECTIONS 19-2-705 AND 19-3-520, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 19-1-102, MCA, is amended to read:

"19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision of the state.

(2) (a) The term "employment" means any service performed by an employee in the employ of the state or any political subdivision of the state for the employer, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered

into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the governor issues, with respect to the service, a certificate to the secretary of health and human services pursuant to 19-1-304.

(3) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as the codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954 and as the codes may from time to time be amended.

(4) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a juristic entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, such as but not limited to school districts and housing authorities.

(5) The term "secretary of health and human services" means the secretary of the United States department of health and human services; includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function.

(6) The term "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act",

including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

(7) The term "state agency" means the ~~public employees' retirement board of the public employees' retirement system of the state of Montana~~ department of administration provided for in 2-15-1001.

(8) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act."

Section 2. Section 19-1-202, MCA, is amended to read:

"19-1-202. Costs of administration. All costs allocable to the administration of this chapter must be charged to the ~~pension trust fund of the public employees' retirement system. The amount of administrative costs not defrayed by interest and income earned upon the contribution account, which had been credited to the pension trust fund of the public employees' retirement system, as provided in 19-1-602, prior to July 1, 1987, must be paid to the state agency for deposit to the pension trust fund of the public employees' retirement system by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions~~ state agency."

Section 3. Section 19-1-602, MCA, is amended to read:

"19-1-602. Management of account. (1) All money in the account must be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency has full power, authority, and jurisdiction over the account, including all money and property or securities belonging to the account. ~~It~~ The state agency may perform any acts, whether or not specifically designated, that are necessary to the administration of the account and that are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account as part of the unified

investment program described in Title 17, chapter 6, part 2. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the state general fund.

(4) By the end of the fiscal year during which all payments determined to be due and payable from the state to the social security administration and the state agency's administrative expenses necessary to administer this chapter have been paid, the state agency shall transfer any funds remaining in the contribution account to the state general fund."

Section 4. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the division for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with

19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Division" means the public employees' retirement division of the department of administration.

(17) "Employee" means a person who is employed by an employer in any capacity and whose salary is paid by the employer.

(18) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(19) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

- (a) the position exists to perform the element;
- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

(20) "Fiscal year" means any year commencing with July 1 and ending the following June 30.

(21) "Inactive member" means a member who is not an active or retired member.

(22) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

~~——(22)(23)~~ "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

~~——(23)(24)~~ "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~——(24)(25)~~ "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

~~——(25)(26)~~ "Pension" means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

~~——(26)(27)~~ "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

~~——(27)(28)~~ "Regular contributions" means contributions required from members under a retirement system.

~~——(28)(29)~~ "Regular interest" means interest at the rate set from time to time by the board.

~~——(29)(30)~~ "Retirement" or "retired" means the status of a member who has

terminated from service and has received and accepted a retirement benefit from a retirement system.

———~~(30)~~ (31) "Retirement benefit" means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

———~~(31)~~ (32) "Retirement system" ~~or~~, "system", or "plan" means one of the public employee retirement systems enumerated in 19-2-302.

———~~(32)~~ (33) "Service" means employment of an employee in a position covered by a retirement system.

———~~(33)~~ (34) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

———~~(34)~~ (35) "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

———~~(35)~~ (36) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

———~~(36)~~ (37) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

———~~(37)~~ (38) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time

over the value of its cash and investments on that same date.

—~~(38)~~(39) "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

—~~(39)~~(40) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

Section 5. Section 19-2-505, MCA, is amended to read:

"19-2-505. Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of the ~~department~~ board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the division; ~~or~~

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board."

Section 6. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions

~~at the member's request.~~ on written application by the member. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who terminates from service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination without a written application from the member.

(3) A nonvested member who terminates from service with accumulated contributions of \$200 to \$5,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination, unless a written application is made pursuant to subsection (4).

~~———(2)(4)~~ Upon the written request application of a terminating member with \$200 or more of accumulated contributions, the division shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) of the eligible portion of a refund of the member's accumulated contributions. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The terminating member shall designate the eligible retirement plan on forms provided by the division. Amounts of the member's accumulated contributions that are not eligible for direct rollover distribution must be paid to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution.

~~———(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.~~

~~———(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is~~

~~sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.~~

~~----- (5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written request."~~

Section 7. Section 19-2-704, MCA, is amended to read:

"19-2-704. Purchasing service credits allowed -- payroll deduction. (1)

Subject to the rules promulgated by the board, an eligible member may elect to contribute amounts in addition to the mandatory employee contributions required by the retirement system in which the member participates for the purpose of purchasing service credits as provided by the statutes governing the retirement system.

~~(2) A member eligible to qualify service under the provisions of 19-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404 may, at any time prior to retirement, elect to transfer all or a portion of the member's accumulated contributions on deposit in a pension trust fund from which service is being transferred to the pension trust fund of another plan in which service is being credited. The transfer of contributions may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the accumulated contributions on deposit in a pension trust fund is being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall identify at the time of the transfer the taxed and tax-deferred amounts being transferred.~~

~~----- (3) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase, qualify, or transfer service credits, membership service, or contributions.~~

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service as provided by the statutes governing the retirement

system to which the member belongs may make a lump-sum payment, installment payments, or a combination of a lump-sum payment and installment payments.

(4) Installment payments must be paid directly to the board, unless the member makes payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer a binding, irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be executed by the member and the member's employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;

(d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

(e) must specify that the contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been received by the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions

paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board.

(e) A contract for installment payments initiated before July 1, 1999, may be made only if the member executes a written application and authorization for payroll deductions pursuant to this section. If the member does not execute a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may make more than one binding, irrevocable payroll deduction authorization as long as a subsequent deduction authorization does not amend a previous binding, irrevocable authorization. A member may not prepay an amount under a binding, irrevocable payroll deduction.

(7) If a member terminates service or dies before completing all payments required by a payroll deduction authorization made pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid as of the date of termination unless further payment is made as provided in this subsection. In the case of a termination, the member may make a lump-sum payment for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 8. Section 19-2-706, MCA, is amended to read:

"19-2-706. Additional service for member involuntarily terminated from membership service. (1) An employee of the state or university system is entitled

to the involuntary termination provision provided in subsection (3) if:

(a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature on or after July 1, 1997, but before July 1, 1999;

(c) the employee is eligible for a normal service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service purchased under this section is the total actuarial cost of purchasing the service based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, or 19-8-904. The employer-paid portion applied toward the service purchase must be calculated using the formula $A \times B \times C$ when:

(a) A is equal to a maximum of 3 additional years of service that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service purchased by the terminated employee.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service to be purchased and the amount contributed by the employer under subsection (3). ~~A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified~~

~~to receive all or part of the additional service provided in this section.~~ A member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year forfeits the additional service. The employer's contribution to purchase that member's additional service, minus any retirement benefits already paid, must be ~~refunded~~ credited to the employer. As used in this subsection, the same jurisdiction means all agencies of the state, including the university system."

NEW SECTION. **Section 9. Qualified military service.** Notwithstanding any other provision of state law governing a retirement system, contributions, benefits, and service credit for qualified military service are governed by section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994.

NEW SECTION. **Section 10. Rollover of contributions.** (1) A member who wishes to and is eligible to qualify service from another retirement system or plan into a retirement system provided for in 19-2-302 may, prior to retirement, make written application to the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent

permitted by section 401(a)(31) of the Internal Revenue Code.

NEW SECTION. **Section 11. Transfer of service and contributions from other Montana public employee retirement systems.** (1) A member eligible to transfer service, pursuant to 9-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, or 19-13-404, into the system to which the member belongs shall complete the transfer prior to the member's retirement.

(2) The accumulated contributions to be transferred by the member may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the member's accumulated contributions on deposit in a pension trust fund are being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall at the time of the transfer identify the taxed and tax-deferred amounts being transferred to the board.

Section 12. Section 19-2-902, MCA, is amended to read:

"19-2-902. ~~Frequency of benefit payments~~ Payment of benefits. (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter must be payable in monthly installments, except ~~that the board may elect to convert payments of at least \$20 per year to a single sum of actuarial equivalent value as provided in this part.~~

(2) If the total actuarial present value of a benefit payable to a member or beneficiary is equal to or less than \$5,000, the board shall pay the present value of the benefit to the member or beneficiary in a single lump sum unless the member or beneficiary chooses to receive a monthly benefit. The lump sum must be paid at the time the initial monthly benefit would otherwise be payable. An election to receive a monthly benefit must be made at least 30 days prior to the first payment date.

(3) A If a benefit recipient dies before the last day of the month, a smaller pro rata amount may otherwise payable to the payment recipient must be paid for part of a month when the retirement benefit ends before the last day of the month to the

designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate."

Section 13. Section 19-2-908, MCA, is amended to read:

"19-2-908. Time of commencement of benefit. (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated covered service, and filed the appropriate written application. However, the board may on its own accord and without a written application begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before terminating covered service, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following receipt of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits commence on the first day of the month following the official's last full month in office. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating final average salary under the retirement system in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) The disability retirement benefit payable to a member must commence on the day following the member's termination from service.

(4) Monthly survivorship benefits must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board."

Section 14. Section 19-2-1001, MCA, is amended to read:

**"19-2-1001. Maximum contribution and benefit limitation limitations. A-
~~monthly benefit~~ (1) Employee contributions paid to and retirement benefits paid ~~under~~
~~from~~ the retirement systems may not exceed the annual limits on contributions and
benefits as specified in, respectively, allowed by section 415 of the Internal Revenue
Code of 1986 and adjusted annually by the commissioner of internal revenue.**

**(2) A member may not receive an annual benefit that exceeds the dollar amount
specified in section 415(b)(1)(A) of the Internal Revenue Code, subject to the
applicable adjustments in section 415(b) of the Internal Revenue Code.**

**(3) Notwithstanding any other provision of law to the contrary, the board
may modify a request by a member to make a contribution to a retirement system if
the amount of the contribution would exceed the limits provided in section 415 of
the Internal Revenue Code, by using the following methods:**

**(a) If the retirement system's law requires a lump-sum payment for the purchase
of service credit, the board may establish a periodic payment plan for the member
in order to avoid a contribution in excess of the limits under section 415(c) or
415(n) of the Internal Revenue Code.**

**(b) If payment pursuant to subsection (3)(a) will not avoid a contribution
in excess of the limits imposed by section 415(c) of the Internal Revenue Code, the
board shall either reduce the member's contribution to an amount within the limits
of that section or refuse the member's contribution.**

**(4) The limitation year for purposes of section 415 of the Internal Revenue
Code is the plan year beginning July 1 and ending June 30.**

**(5) "Salary" or any other similar term used for the purposes of determining
compliance with section 415 of the Internal Revenue Code includes the amount of an
elective deferral, as defined in section 402(g) of the Internal Revenue Code, or
any other contribution that is contributed or deferred by the employer at the election
of the member and that is not includable in the gross income of the member because
of sections 125, 403(b), or 457 of the Internal Revenue Code."**

Section 15. Section 19-2-1006, MCA, is amended to read:

"19-2-1006. Use of forfeitures. A retirement system subject to this chapter

may not apply forfeitures of benefits resulting from the member's termination of employment, the death of the member, or another reason to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8). However, forfeitures may be used to reduce the costs of administration of a retirement system subject to this chapter."

Section 16. Section 19-2-1007, MCA, is amended to read:

"19-2-1007. Required distributions. The benefits payable by the retirement systems subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) Benefits must begin by the later of April 1 of the calendar year following the ~~plan~~ calendar year in which the member reaches 70 1/2 years of age or ~~retires,~~ whichever is later April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the year following the calendar year in which the member attains age 70 1/2 or April 1st of the year following the calendar year in which the member terminates employment, whichever is later, the board shall begin distribution of the benefit as required by the retirement system to which the member belongs or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.

(2) The member's entire interest in the retirement system must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary. Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations implementing that section.

(3) The life expectancy of a member or the member's beneficiary may not be recalculated after payment of the benefits has begun.

~~—(3)(4)~~ (4) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed beginning within 3 months of notification to the board of the death of the member and, if necessary,

the identification of the beneficiary pursuant to 19-2-802 and must be distributed at least as rapidly as under the method of distribution prior to the member's death.

~~-----~~ (4) (5) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, payable over the life or life expectancy of the spouse, and that begins no later than the date the member would have reached 70 1/2 years of age. Distributions to a member's beneficiary must begin as soon as administratively feasible, but must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by that date, payment to the beneficiary must be made in the form of a lifetime monthly benefit payment if the beneficiary is eligible for a monthly benefit or in a lump sum if that is the only benefit payable to the beneficiary.

~~-----~~ (5) (6) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code."

Section 17. Section 19-2-1010, MCA, is amended to read:

"19-2-1010. Retaining qualified plan status -- content of plan document -- board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code. If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal Revenue Code or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code and with consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the system plan to retain tax-deferred its qualified status.

(2) For the purposes of section 401(a) of the Internal Revenue Code, the plan document for each retirement system is composed of the applicable provisions of the Montana constitution, this chapter, the applicable chapter in Title 19 governing the system, and applicable rules adopted by the board.

(3) The board may adopt rules to implement this section."

Section 18. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer before any pretax deductions allowed by state or federal law are made. Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a).

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(4) "Employer contributions" means payments to the pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(5) "Final average salary", ~~except as provided in 19-3-520,~~ means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation."

Section 19. Section 19-3-318, MCA, is amended to read:

"19-3-318. Refund Credit of employer contribution made after termination.

Employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system, as provided in 19-3-403(4), must be ~~repaid~~ credited to the employer."

Section 20. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) The following employees in covered employment may become members of the retirement system at their option ~~at any time during their employment in a covered position by filing a membership card~~ an irrevocable, written application with the board within 180 days of commencement of their employment:

- (a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;
- (b) part-time employees serving in employment that does not exceed a total of 960 hours of employment covered by this chapter in any fiscal year;
- (c) employees directly appointed by the governor;
- (d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;
- (e) the chief administrative officer of any city or county;
- (f) employees of county hospitals or rest homes in counties of the third, sixth, and seventh class.

(2) Employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

~~——(2)(3)~~ If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement."

Section 21. Section 19-3-503, MCA, is amended to read:

"19-3-503. Election to qualify military service. (1) (a) Except as provided in subsection (2), a member with 10 years or more of service credits may, at any time prior to retirement, make a written election with the board to purchase service credits for all or any portion of the member's active service in the armed forces

of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to ~~19-2-705~~ [section 9] or is ineligible under subsection (2)~~(a)~~.

(b) To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system.

(2) ~~(a)~~ If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit, the member may not qualify the member's military service under subsection (1).

~~----- (b) However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the armed conflict, December 7, 1941, to August 15, 1945, is not more than 25% of the total sum of all years of military service including reserve and active duty time."~~

Section 22. Section 19-3-504, MCA, is amended to read:

"19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for this period unless the member complies with subsections (2) ~~through (4)~~ and (3), in which case the absence is considered as time spent in service for both service credits and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service,

contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

~~(4) Payment of the employee's contributions that are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service.~~

~~—(5) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which retirement benefits are received if the member retires during the absence."~~

Section 23. Section 19-3-505, MCA, is amended to read:

"19-3-505. Qualification of previous employment with employer. (1) Subject to the provisions of this section, any person who has employment with an employer that is not service may convert all or a portion of the employment to membership service by filing written notice with the board.

(2) (a) The person shall pay to the retirement system the sum of the amount that the person and the person's employer would have contributed during the period of service converted if the employer had been an employer covered by the retirement

system and the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(b).

(b) The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board shall determine the eligibility of all service credit requests.

~~----- (4) Payment may be made in one sum at the time of filing notice or by making additional contributions on an installment basis before retirement. Failure to make regular monthly payments in any month in which the member receives normal compensation forfeits the person's right to make any further installment payments, unless permission is granted by the board."~~

Section 24. Section 19-3-512, MCA, is amended to read:

"19-3-512. Qualification of service from other public retirement systems.

(1) A member with 5 or more years of membership service in the public employees' retirement system may qualify:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not qualify more than 5 years of service under this section. To qualify this service, a member shall:

(a) at any time before retirement make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board based on the most recent actuarial valuation of the system.

~~(3) Contributions to qualify service under this section may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

~~——(4) Service qualified under this section may not be:~~

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-3-503.

~~——(5)~~ (4) Service qualified under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the accumulated contributions made to qualify the service."

Section 25. Section 19-3-513, MCA, is amended to read:

"19-3-513. Election to purchase additional service. (1) At any time before retirement, a person who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified under the retirement system, up to a maximum of 5 years of additional service.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) (a) Except as provided in subsection (3)(b), a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for service retirement."

Section 26. Section 19-5-409, MCA, is amended to read:

"19-5-409. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than 5 years of service under ~~19-2-705~~ [section 9] and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 27. Section 19-6-101, MCA, is amended to read:

"19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of

funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made and exclusive of maintenance, allowances, and expenses.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of service may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a member."

Section 28. Section 19-6-801, MCA, is amended to read:

"19-6-801. Election to qualify military service. (1) A member with 15 years or more of service credit with the Montana highway patrol may, at any time prior to retirement, make a written election with the division to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to ~~19-2-705~~ [section 9].

(2) To qualify this service:

(a) a member not covered by 19-6-710 shall contribute to the account the amount

determined by the division to be due based on the member's compensation and regular contribution rate as of the member's 16th year and as many succeeding years as are required to qualify this service, with interest from the date the member becomes eligible for this benefit to the date the member contributes. The member may not qualify more of this service than the member has service with the Montana highway patrol in excess of 15 years.

(b) a member covered by 19-6-710 shall contribute the actuarial cost of the service credit based on the most recent actuarial valuation of the system."

Section 29. Section 19-6-803, MCA, is amended to read:

"19-6-803. Election to qualify law enforcement service performed in another state. (1) Except as provided in subsections ~~(4)~~(3) through ~~(6)~~(5), a member with 5 years or more of membership service in the retirement system may qualify 1 year of out-of-state law enforcement employment for each year of service credit under the retirement system, up to a maximum of 5 years, provided that the member is not eligible to receive a retirement benefit for that out-of-state law enforcement employment.

(2) To qualify this service, a member shall:

(a) at any time before the member's retirement, make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the retirement system, as determined by the board, based on:

(i) the member's compensation for the 12 months immediately preceding the date of the member's election to cover the service under the retirement system; and

(ii) the total contribution rate in effect at the time of purchase of service.

~~—— (3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board.~~

~~—— (4)~~(3) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-6-801.

~~—— (5)~~(4) Service qualified under this section may not be used in calculating

a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the contributions made to qualify the service.

~~-----~~(6)(5) The combined total service qualified under this section and military service qualified under 19-6-801 may not exceed 5 years."

Section 30. Section 19-6-804, MCA, is amended to read:

"19-6-804. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ [section 9], 19-6-801, 19-6-803, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 31. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal

Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff. The board shall adopt rules incorporating both the peace officers standards and training council's current law enforcement training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs who are eligible for membership in this retirement system."

Section 32. Section 19-7-803, MCA, is amended to read:

"19-7-803. Election to qualify previous military service. (1) A member with 15 years or more of service credit may, at any time prior to retirement, make a written election with the board to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, except as provided in subsection (3), if the member is not otherwise eligible to receive credit. To qualify military service, the member shall contribute to the account the actuarial cost of granting the service, to be determined by the board based on the most recent actuarial valuation of the system. The member may not qualify more of the member's military service than the member has service credits in the sheriffs' retirement system in excess of 15 years. Military service purchased under this section is not membership service and may not

be used in determining eligibility for a service retirement benefit.

(2) If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify the member's military service under subsection (1). ~~However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time.~~

(3) The combined total purchase of additional years of service under the provisions of 19-7-804 and this section may not exceed 5 years."

Section 33. Section 19-7-804, MCA, is amended to read:

"19-7-804. Election to purchase additional service. (1) Except as provided in subsection ~~(6)~~ (5), at any time before retirement, a member may make a written election with the board to purchase 1 additional year of service credit for every 5 years of membership service.

(2) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.

(3) To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

~~(4) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board. Payments must be completed prior to retirement.~~

~~—(5)~~ Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify for the purchase of military service under 19-7-803.

~~—(6)~~ (5) The combined total of additional years of service purchased under the

provisions of 19-7-803 and this section may not exceed 5 years."

Section 34. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service upon which contributions were made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation appointed as a peace officer pursuant to 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 35. Section 19-8-904, MCA, is amended to read:

"19-8-904. Election to purchase additional service. (1) At any time before

retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ [section 9], 19-8-901, 19-8-903, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 36. Section 19-8-905, MCA, is amended to read:

"19-8-905. Absence due to injury or illness. (1) Time, not to exceed 5 years, during which a member is absent because of an injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for the absence unless the member complies with subsections (2) ~~through (4)~~ and (3), in which case the absence is considered as time spent in service for both service credits and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute an amount equal to the contributions that the member would have made on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

~~(4) Payment of the employee's contributions due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service.~~

~~—(5)~~ A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which benefits are received if the member retires during the absence."

Section 37. Section 19-9-104, MCA, is amended to read:

"19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means the remuneration, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, ~~that a member receives as an active police officer~~ paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made.

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) "Final average compensation" means the monthly compensation of a member, averaged over the last 36 months of the member's service or, in the event a member has not been a member that long, over the period of membership.

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 5 years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(8) "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

(9) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(10) "Survivor" means a surviving spouse or dependent child of the member."

Section 38. Section 19-9-403, MCA, is amended to read:

"19-9-403. Election to qualify previous military service. (1) A member with 15 years or more of service credit may, at any time prior to retirement, make a written election with the board to qualify up to a maximum of 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits if the member is not otherwise eligible to receive credit. To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board based on the most recent actuarial valuation of the system. The member may not qualify more of the member's military service than the member has service credit in excess of 15

years.

(2) If a member has retired from active duty in the armed forces of the United States with a normal military service retirement benefit, the member may not qualify the member's military service under subsection (1). ~~However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time."~~

Section 39. Section 19-9-411, MCA, is amended to read:

"19-9-411. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ [section 9], 19-9-403, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 40. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following

definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid ~~by an employer~~ for the firefighter's service as a firefighter out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code have been made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, if the member has not been a member that long, over the period of the member's service. Lump-sum

payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of \$300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 41. Section 19-13-403, MCA, is amended to read:

"19-13-403. Election to qualify previous military service. (1) A member with 15 years or more service credit may, at any time prior to retirement, make a written election with the board to qualify all or any portion of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service under ~~19-2-705~~ [section 9]. To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board based on the most recent actuarial valuation of the system. A member may not qualify more of the member's military service than the member has service credit in excess of 15 years. Military service purchased under

this section may not be used in determining the member's eligibility for a service retirement.

(2) If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify military service under subsection (1). ~~However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time."~~

Section 42. Section 19-13-405, MCA, is amended to read:

"19-13-405. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ [section 9], 19-13-403, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 43. Section 53-21-204, MCA, is amended to read:

"53-21-204. Mental health corporations. (1) Mental health regions must be

established in the state mental health plan and must conform to the mental health regions as established in the state mental health construction plan promulgated by the department under the federal Community Mental Health Centers Act.

(2) The mental health regions must be established under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations may not be considered agencies of the department or the state of Montana. ~~However, they may retain and enter into retirement programs as established under Title 19, chapter 3.~~

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board consists of three members-at-large who must be chosen according to the corporate bylaws, as follows:

- (a) Two members must be chosen, one from each of the following groups:
 - (i) persons with severe and disabling mental illnesses; and
 - (ii) family members of persons with severe and disabling mental illnesses.
- (b) One person must be chosen from among the following four groups:
 - (i) parents of children with emotional disturbances;
 - (ii) advocates of mental health services for the elderly;
 - (iii) health care professionals; or
 - (iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

(4) This section does not prohibit a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board must be established under guidelines adopted by the bylaws of the corporation. All appointments to the board must be for terms of 2 years, and the department must be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of money and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, taxes, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part must be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members must be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. If the general fund is insufficient

to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(9) The regional board of mental health, with the approval of the department, shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with subsection (6)(d)."

NEW SECTION. **Section 44. Repealer.** Sections 19-2-705 and 19-3-520, MCA, are repealed.

NEW SECTION. **Section 45. Codification instruction.** [Sections 9, 10, and 11] are intended to be codified as an integral part of Title 19, chapter 2, part 7, and the provisions of Title 19, chapter 2, part 7, apply to [sections 9, 10, and 11].

NEW SECTION. **Section 46. Effective dates -- contingent effective date.** (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1999.

(2) [Sections 3 and 45 and this section] are effective on passage and approval.

(3) The provisions in [section 7] providing for the making of contributions required to purchase service by employer pickup are effective on the date that the Internal Revenue Service determines in a private letter ruling that the creation and use of the employer pickup method of making contributions provided in that section comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.

- END -

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT BRAINARD**, on January 15, 1999 at
9:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Matt Brainard, Chairman (R)
Rep. Toni Hagener, Vice Chairman (D)
Rep. Allan Walters, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joan Andersen (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. George Golie (D)
Rep. Donald L. Hedges (R)
Rep. Monica Lindeen (D)
Rep. Jeff Mangan (D)
Rep. Douglas Mood (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bill Tash. (R)
Rep. Bill Thomas (R)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Karen Mills, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 118, HB 119: POSTED JAN.
13, 1999

Executive Action: NONE

HEARING ON HOUSE BILL 118

Opening Statement by Sponsor: REP. DOUG MOOD EXHIBIT(sth11a01)
EXHIBIT(sth11a02)EXHIBIT(sth11a03)
{Tape : 1; Side : A; Approx. Time Counter : 0.8 -30}

Informational Testimonial:

DAVE SENN, Executive Director of TRS-EXHIBIT(sth11a04)
Overview of Public Employee's Retirement Act. Went through
exhibit 4 step by step, because essential in understanding why
House Bill 118 be adopted.
{Tape : 1; Side : B; Approx. Time Counter : 4.3 - 16.8}

Proponent's Testimony:

TOM BILODEAU, Secretary of Montana Education Assoc. They've been
discussing tax issues that affect bills for pension plans for
several years. This legislation does it.{Tape : 1; Side : B;
Approx. Time Counter : 17 - 18.8}

GLEN LEAVITT, Board of Regents Montana University System {Tape :
1; Side : B; Approx. Time Counter : 18.9 - 19}

Questions from Committee Members and Responses:

REP. GOALIE TO DAVID SENN: Why is there an age necessity
requirement for disability eligibility? SENN: Must have five
years of teaching time and experience, then it guarantees you 15%
of your salary.

REP. WAGNER TO DAVID SENN:

REP. WALTER TO DAVID SENN: Referencing to the fiscal note; what
about pop-up payments {80%-100%} if spouse dies? SENN: Have to
have monies to pay the pop-up increase.{Tape : 1; Side : B;
Approx. Time Counter : 19.4 - 26.1}

Closing by Sponsor: REP. DOUG MOOD
{Tape : 1; Side : B; Approx. Time Counter : 26.2 - 27.4}

HEARING ON HOUSE BILL 119

Opening Statement by Sponsor: REP. DOUG MOOD
{Tape : 2; Side : A; Approx. Time Counter : 0.2 -2.7}

Proponent's Testimony:

MIKE O'CONNOR, Executive Director of Public Employee's Retirement System EXHIBIT(sth11a05)EXHIBIT(sth11a06)EXHIBIT(sth11a07)EXHIBIT(sth11a08)EXHIBIT(sth11a09){Tape : 2; Side : A; Approx. Time Counter : 2.8 - 30 {Tape : 2; Side : B; Approx. Time Counter : 0.1 - 6.7}}

GLEN LEAVITT, Director of Benefits for Montana University System {Tape : 2; Side : B; Approx. Time Counter : 7 - 7.1}

Questions from Committee Members and Responses:

REP. TASH TO MIKE O'CONNOR. Do these amendments meet all qualifications: Yes; IRS and our staff researchers have carefully checked this bill.

REP. BRAINARD TO MIKE O'CONNOR.

REP. WAGNER TO MIKE O'CONNOR. Will the effective date of this act be grand- fathered back in time? You can opt in after 180 days. {Tape : 2; Side : B; Approx. Time Counter : 7.1 - 17}

Closing by Sponsor: REP. DOUG MOOD
{Tape : 2; Side : B; Approx. Time Counter : 14.2 - 17}

ADJOURNMENT

Adjournment: The meeting was adjourned at 10:44 A.M.

REP. MATT BRAINARD, Chairman

KAREN MILLS, Secretary

MB/KM

EXHIBIT(sth11aad)

TABLE OF PROPOSED QUALIFICATION LEGISLATION (HB119)

N.B. 117 5
 EXHIBIT
 DATE Jan 15, 1999
 HB 119

S:\DOCS\LEGIS\1999\QUAL\FY\QUALTBL2.WPD/January 11, 1999

This table contains a very brief summary by PER Board staff of the major provisions of HB119 as introduced. It should not be considered definitive legal authority nor indicative of Board or legislative intent.

Section	Statute	Proposed Change	Reason
1	19-1-102	Transfers responsibility for administration of Social Security functions in Title 19 Chapter 1, MCA, to the Department of Administration.	Retirement trust fund money should not be used to administer Social Security functions. This change will bring Chapter 1 in to compliance with Article VIII Section 15 of the Montana Constitution. Section 15 requires the retirement system trust funds be used only to provide benefits to participants and to defray administrative expenses of the retirement system. In addition, Internal Revenue Code (IRC) §401(a) says the trust assets must be used exclusively for benefits to retirement system members or their beneficiaries.
2	19-1-202	Cost to administer the state Social Security contract in the future will be paid by the Department of Administration.	Future costs will be minimal. The Department of Administration has agreed to absorb costs because the state's social security trust account will revert to the general fund before 7/1/99 (see next section).
3	19-1-602	Cost to administer the state Social Security contract administration before 7/1/99 will be paid by the social security trust account.	Montana Constitutional and federal law requirements make change necessary (see first section).
4	19-2-303	Defines "Internal Revenue Code."	Defines the term as used in Chapters 3, 5 through 9, and 13 of Title 19.
5	19-2-505	Prevents the Board from entering transactions prohibited by the Internal Revenue Code	IRC sections 503(b) describes transactions which are prohibited under the Code. If the Board were to engage prohibited transactions, the retirement plans could lose their tax exempt status.
6	19-2-602	Specifies the requirements for members to receive a refund or a rollover distribution of their accumulated contributions. It also allows the Board to distribute smaller accounts without an application for a refund or rollover.	IRC specifies requirements for rollover distributions and compliance is necessary to ensure IRS qualification of the Plans administered by the Board. This statute also provides for a proactive approach to minimizing dormant accounts. Sections 19-2-602(3), (4) and (5) did not comply with IRC.
7	19-2-704	Members can currently make a lump sum payments to purchase service or the service may be purchased by installment payments. New language allows installment payments to be tax deferred if the employee makes the payments by payroll deduction.	Employee installment payments are made tax deferred by using IRC §414(h) rules for employer deduction of payments from the employee. Section 19-2-704(2) was stricken from this section and moved to new Section 11 because it dealt only with transfers from other Montana retirement systems. IRC §415 limits were incorporated.

Section	Statute	Proposed Change	Reason
8	19-2-706	Eliminates payment of a refund of an incomplete service purchase to the member. Also gives employers credit (rather than refunds) for contributions the employer improperly paid to the retirement system.	Any payment to the member can be considered an "in-service distribution" (distribution prior to retirement) which is prohibited by IRC.
9	New	Current language for purchasing military service was discriminatory and was eliminated.	Comply with IRC §414(u) and with the Uniformed Services Employment and Reemployment Rights Act (USERRA).
10	New	Allows a member to rollover money from any other qualified plan to the Plans administered by the Board. The rollover may only be used to purchase service.	Increases portability by allowing members to roll money into the plans administered by the Board.
11	New	Essentially, old language from 19-2-704(2), cleaned up and moved to a new place.	See explanation for Section 7, above.
12	19-2-902	For a benefit of less than \$5000 total actuarial present value, the Board may pay the benefit in a lump sum. Payment of partial month benefits on death is clarified.	Ensures plans comply with IRC §401(a)(9) which requires distributions be made timely. Eliminates difficult and costly small payments.
13	19-2-908	All plan accounts must be distributed in compliance with IRS requirements and this amendment allows the Board to comply even without a written application.	Same as section 12.
14	19-2-1001	Specifies limits on the contributions a member make and the maximum benefits the member may receive.	Compliance with IRC § 415(b), annual benefit limits, and §415(c), contribution limit.
15	19-2-1006	Clarifies what forfeitures are and how they may be used.	Forfeitures can't be used to increase plan benefits.
16	19-2-1007	All plan accounts must be distributed in compliance with IRS requirements (generally by age 70½ or, if later, on retirement) and this amendment allows the Board to comply.	Compliance with IRC 401(a)(9) required distributions.
17	19-2-1010	Describes what constitutes the retirement plan for qualification requirements.	Compliance with IRC §401(a) requirements for a tax deferred retirement plan and §414(d) requirements for a governmental plan.
18	19-3-108	Clarify the definition of "compensation" and "final average salary."	Primarily clarifying and coordinating with tax-deferred deductions for service purchases and other deductions.
19	19-3-318	Gives employers a credit (rather than a refund payment) for improperly paid contributions.	Payments to employers may be considered payments for purposes other than the benefit of members and is disallowed under IRC §401(a)(2).
20	19-3-412	Requires members who are eligible for optional membership to make an irrevocable election within 180 days.	Compliance with IRC §401(a), also necessary as a practical consequence of limitations on service purchases.

Section	Statute	Proposed Change	Reason
21	19-3-503	Current language for purchasing military service is discriminatory and was eliminated.	Comply with IRC §414(u), USERRA.
22	19-3-504	Eliminates language dealing with service purchase payments.	Language is redundant, service purchase payments are covered in sections 7, 10, and 11 of the bill.
23	19-3-505	Eliminates language dealing with service purchase payments.	Same as section 22.
24	19-3-512	Eliminates language dealing with service purchase payments.	Same as section 22.
25	19-3-513	Eliminates language dealing with service purchase payments.	Same as section 22.
26	19-5-409	Eliminates language dealing with service purchase payments.	Same as section 22.
27	19-6-101	Clarify the definition of compensation.	Same as section 18.
28	19-6-801	Correct the Military Service Reference	19-2-705 is repealed and the reference should be to the new section 9.
29	19-6-803	Eliminates language dealing with service purchase payments.	Same as section 22.
30	19-6-804	Eliminates language dealing with service purchase payments.	Same as section 22.
31	19-7-101	Clarify the definition of compensation.	Same as section 18.
32	19-7-803	Current language for purchasing military service is discriminatory and was eliminated.	Comply with IRC §414(u), USERRA.
33	19-7-804	Eliminates language dealing with service purchase payments.	Same as section 22.
34	19-8-101	Clarify the definition of compensation.	Same as Section 18.
35	19-8-904	Eliminates language dealing with service purchase payments.	Same as section 22.
36	19-8-905	Eliminates language dealing with service purchase payments.	Same as section 22.
37	19-9-104	Clarify the definition of compensation.	Same as section 18.
38	19-9-403	Current language for purchasing military service is discriminatory and was eliminated.	Comply with IRC §414(u), USERRA.
39	19-9-411	Eliminates language dealing with service purchase payments.	Same as section 22.
40	19-13-104	Clarify the definition of compensation.	Same as Section 18.
41	19-13-403	Current language for purchasing military service is discriminatory and was eliminated.	Compliance with IRC §414(u), USERRA.

Section	Statute	Proposed Change	Reason
42	19-13-405	Eliminates language dealing with service purchase payments.	Same as section 22.
43	53-21-204	Eliminated language allowing mental health corporations to join the Public Employees' Retirement System (PERS).	These corporations are non-governmental by statutory definition and are not eligible to join the PERS, a governmental retirement plan under the IRC §401(a).
44	19-3-520 19-2-705	Repeals special membership status for public administrators and absence in military service.	Same as section 20, requires public administrators to be treated as any other governmental employee or independent contractor as appropriate. Absence in military service is rewritten in section 9 to comply with USERRA.
45	NA	Codification instruction.	
46	NA	Effective dates.	



Committee on Public Employee Retirement Systems

55th Montana Legislature

EXHIBIT ~~2~~ 6

DATE Jan. 15 1999
HB 119
Room 13B State Capitol
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

SENATE MEMBERS
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DAVID NISS
STAFF ATTORNEY

REPORT ON HB 119

(Proposal # 9 and # 10 - Public Employees' Retirement Board's
general revision bill to comply with federal IRC regulations)

This report is required under Section 5-21-105, MCA. The Committee on Public Employee Retirement Systems (CPERS) must report its findings and recommendations on each public retirement-related proposal CPERS reviews prior to each legislative session. The findings and recommendations relate to the conceptual proposal as presented to CPERS prior to the final drafting and introduction of the bill.

Bill summary

House Bill No. 119 is by request of the Public Employees' Retirement Board. The bill revises statutes to ensure that the retirement systems governed by the PER Board comply with federal Internal Revenue Codes (IRC) governing public pension plans. (CPERS relied on the Board's summary table identifying the changes made and did not examine the final bill draft.)

Issue background

Failure to comply with the IRC provisions applicable to public retirement systems can result in an IRS determination that the plan is not "qualified". A plan that is not "qualified" is subject to losing its federal tax-deferred status. Federal laws and regulations are regularly being revised. The PER Board recently obtained outside tax counsel to review system compliance. Federal qualification bills are not unusual and are necessary to ensure the systems remain qualified.

Committee findings

Public Policy Issues: The policy concern is that to keep the retirement systems qualified under IRC regulations, some changes may affect plan members' benefit options or how benefits are paid out. Thus, the PER Board actively exercises its function in determining how best to implement necessary changes. The areas affected by this bill include:

- > administration of the social security program
- > member refunds
- > service purchase provisions, including the purchase of military service

CPERS report

HB 119

Page 2

- > optional membership elections for certain types of members, including for legislators and appointed officials
- > the definition of "compensation"
- > treatment of mental health corporations

Effect on other retirement systems: This bill covers all systems administered by the PER Board.

Fiscal implications: Although some changes affect system fiscal procedures, no new revenue is required. The fiscal implications are internal to the systems.

Testimony to CPERS

Proponents: Public Employees' Retirement Board

Opponents: None.

Committee recommendation and action

CPERS is required by statute to recommend that the legislature PASS or DO NOT PASS the proposal as presented to CPERS during the interim. CPERS may also recommend amendments. A CPERS report and recommendation is for informational purposes and does not bind the full legislature to any particular course of action.

CPERS voted 8 to 0 to recommend a DO PASS on HB 119

Date of CPERS action: October 29, 1998

Report prepared by: Sheri S. Heffelfinger
Research Analyst and staff to CPERS
Legislative Services Division
444-3596

PER BOARD REQUESTED AMENDMENT 1 HB 119
(ADDED LANGUAGE IN CAPITALS AND UNDERLINED)

Section 4. Section 19-2-303, MCA, is amended to read:

"19-2-303. **Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(20) "Fiscal year" means A PLAN YEAR, WHICH IS any year commencing with July 1 and ending the following June 30.

PER BOARD REQUESTED AMENDMENT 2
(ADDED LANGUAGE IN CAPITALS AND UNDERLINED)

Section 7. 19-2-704, MCA, is amended to read:

"19-2-704. Purchasing service credits allowed -- payroll deduction.

* * *

(6) If the board notifies the employer that a proper written application and authorization has been received by the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. THE PICK UP DOES NOT APPLY TO ANY CONTRIBUTIONS MADE BEFORE THE EFFECTIVE DATE OR TO ANY CONTRIBUTION THAT RELATES TO COMPENSATION EARNED FOR SERVICES BEFORE THE EFFECTIVE DATE.

(e) A contract for installment payments initiated before July 1, 1999, may be made only if the member executes a written application and authorization for payroll deductions pursuant to this section. If the member does not execute a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may make more than one binding, irrevocable payroll deduction authorization as long as a subsequent deduction authorization does not amend a previous binding, irrevocable authorization. A member may not prepay an amount under a binding, irrevocable payroll deduction.

* * * *

PER BOARD REQUESTED AMENDMENT 3
(ADDED LANGUAGE IN CAPITALS AND UNDERLINED)
(DELETED LANGUAGE IN BRACKETS)

Section 14. Section 19-2-1001, MCA, is amended to read:
"19-2-1001. Maximum benefit limitation.

(4) The limitation year for purposes of section 415 of the Internal Revenue Code is the [plan] CALENDAR year beginning [July] EACH JANUARY 1 and ending [June 30] DECEMBER 31.

PER BOARD REQUESTED AMENDMENT 4
(ADDED LANGUAGE IN CAPITALS AND UNDERLINED)

Section 18. Section 19-3-108, MCA, is amended to read:

"19-3-108. **Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer before any pretax deductions allowed by state or federal law are made. Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a).

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer. A NON-PROFIT MENTAL HEALTH CORPORATION ESTABLISHED PURSUANT TO 53-21-204 MAY NOT BE AN EMPLOYER WITH REGARD TO ANY EMPLOYEES HIRED AFTER JUNE 30, 1999.

(4) "Employer contributions" means payments to the pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(5) "Final average salary", ~~except as provided in 19-3-520,~~ means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation."

{ Internal References to 19-3-108: None. }

PER BOARD REQUESTED AMENDMENT 5
(ADDED LANGUAGE IN CAPITALS AND UNDERLINED)

Section 20. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) The following employees in covered employment may become members of the retirement system at their option ~~at any time during their employment in a covered position~~ by filing ~~a membership card~~ an irrevocable, written application with the board within 180 days of commencement of their employment:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) part-time employees serving in employment that does not exceed a total of 960 hours of employment covered by this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes in counties of the third, sixth, and seventh class.

(2) Employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

~~(2)~~(3) If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement.

(4) IF AN EMPLOYEE OR OFFICIAL DOES NOT FILE AN IRREVOCABLE, WRITTEN APPLICATION WITH THE BOARD WITHIN THE TIME ALLOWED IN THIS SECTION, THE EMPLOYEE OR OFFICIAL WAIVES MEMBERSHIP."

**OVERVIEW OF KEY SECTIONS OF THE INTERNAL REVENUE CODE
APPLICABLE TO PUBLIC PENSION PLANS**

The following is a brief description of the Internal Revenue Code sections that are most likely to be found or referenced in Title 19, MCA, or in legislation introduced at the request of the Teachers' or Public Employees' Retirement Boards.

401(a) QUALIFICATION REQUIREMENTS

Section 401(a) constitutes certain requirements that a public plan must follow in order to remain a qualified plan.

The primary advantages in retaining "qualified" status under Code Section 401(a) are:

- Employer contributions are not taxable to members as they are made
- Earnings and income are not taxed to the trust or the members
- Certain favorable tax treatments may be available to members when they receive plan distributions, e.g., ability to rollover amounts

In order for most governmental plans to be qualified, they must meet the definition of a pension plan. A pension plan is defined as "a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement."

401(a)(1) FORMAL PLAN REQUIRED

A plan that allows contributions to a trust for the sole purpose of distributing accumulated contributions and income to employees and beneficiaries must be in writing.

401(a)(2) EXCLUSIVE BENEFIT TO EMPLOYEES

All plan assets must be held in trust and used exclusively for the benefit of employees or their beneficiaries.

401(a)(8) FORFEITURES MAY NOT INCREASE BENEFITS TO REMAINING MEMBERS

The Code requires that a defined benefit plan provide "that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan." Thus, if a member were to separate from service of the employer before becoming vested in the plan, any forfeited funds may not cause other members' benefits to increase. However, forfeitures may be used first to reduce administrative expenses and then to reduce employer contributions.

401(a)(9) LIMITS AND TIMELINES FOR DISTRIBUTIONS

- Code § 401(a)(9) requires that certain distribution rules be met in order for a plan to be qualified. The requirements under Code § 401(a)(9) include:
- Required distribution dates
- Required distribution periods
- Timing and amount of minimum distribution payments
- Incidental benefits requirements.

The plan must also state that any provisions in the plan contradictory to the distribution requirements must be overridden.

401(a)(17) MAXIMUM COMPENSATION

Annual compensation as of January 1998, which may be reported to the system for the purpose of computing benefits or employee contributions, must be limited to \$160,000. This amount is indexed for inflation.

401(a)(25) STATED ACTUARIAL ASSUMPTIONS

A defined benefit plan must specify actuarial assumptions in a manner that precludes employer or legislative discretion in order to provide definitely determinable benefits.

401(a)(31) ROLLOVER OF AN ELIGIBLE DISTRIBUTION TO ANOTHER QUALIFIED PLAN

Members applying to receive a lump-sum refund of their account must be permitted to have an eligible rollover distribution paid directly to an eligible retirement plan instead of receiving the distribution in cash. Such a rollover allows the member to maintain the tax-deferred status of the account.

402(g) ELECTIVE DEFERRALS THAT REDUCE COMPENSATION

Elective deferrals that reduce the members taxable income, but not the total compensation reported to a retirement plan, include:

- 125 Cafeteria Plans
- 403 (b) Tax Deferred Annuities
- 457 Deferred Compensation
- 414(h) Employer Pick-Up

414(d) DEFINITION OF A GOVERNMENTAL PLAN

The Code defines a governmental plan as one which is "established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency of instrumentality of any of the foregoing." Note that whether the plan is maintained for its employees by the government entity may become a question if the plan covers non-governmental employees.

414(h)(2) EMPLOYER PICK-UP

In general, a contribution deducted from the member's compensation, although designated as an employee contribution, will be treated as an employer contribution. Employer contributions are not taxable income for the employee until distributed in the form of a retirement benefit. Consequently, if correctly picked up, an employee contribution will no longer be included in the employee's gross income, nor will it be subject to income tax withholdings.

414(u) QUALIFYING MILITARY SERVICE UPON RETURN FROM ACTIVE DUTY

The Uniformed Services Employment and Reemployed Rights Act OF 1994 (USERRA) requires employers to reemploy and preserve job security, pension and welfare benefits for "qualified" employees who engage in military service.

USERRA requires employers to make, on behalf of returning service members, any contributions to retirement plans that the employer would have made if the service member had not been absent as a result of military service.

A reemployed service member is also entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions to the extent the returning service member makes payment to the plan with respect to such contributions.

415 LIMITATIONS ON CONTRIBUTIONS AND BENEFITS

Dollar and percentage of pay limits are specified.

415(b) LIMITATION ON BENEFITS

For a defined benefit plan, the total pension benefit each member accrues cannot exceed the maximum annual benefit, provided to a member at Social Security retirement age, of \$90,000 as adjusted for inflation, which for 1998, is \$130,000. The dollar limit may be reduced for early retirement.

415(c) LIMITATION ON CONTRIBUTIONS THAT CAN BE MADE TO THE PLAN

Generally, the annual amount that may be added to the member's account is limited to the lesser of \$30,000 or 25% of the member's compensation for the limitation year. Certain types of contributions are not treated as "annual additions." These include:

- Employer Pick-Up contributions
- Funds transferred from one qualified plan to another.
- Rollover contributions
- Repayment of amounts withdrawn

415(k)(3) ALLOWS MEMBERS TO RESTORE PREVIOUSLY WITHDRAWN SERVICE

Repayment of contributions (including interest) will not be taken into account for Code § 415 purposes if the repayment is to a governmental plan with respect to an amount previously refunded on a forfeiture of service credit under that plan or any other governmental plan.

415(m) QUALIFIED EXCESS BENEFIT ARRANGEMENT

Qualified Excess Benefits Arrangements (QEBA) are plans that provide benefits that cannot be provided under a qualified plan due to the Code § 415 limits on contributions and benefits.

415(n) PERMISSIVE SERVICE PURCHASES

Annual amounts contributed to purchase service credit meeting the Code requirements of "permissive service" must satisfy either, the § 415(c) dollar limit or the § 415(b) annual benefit accrual maximum. If the member satisfies either of the two limits, annual additions will not be reduced.

503(b) PROHIBITED TRANSACTIONS

The Code defines "prohibited transactions" to include the following:

- The plan lends any part of income or corpus, without the receipt of adequate security and reasonable rate of interest, to a disqualified person.
- The plan pays any compensation, in excess of reasonable allowance for salaries or other compensation for personal services actually rendered, to a disqualified person.
- The plan makes any part of its services available on a preferential basis to a disqualified person.
- The plan makes any substantial purchase of securities or other property, for more than adequate consideration in money or money's worth, from a disqualified person.
- The plan sells any substantial part of its securities or other property, for less than adequate consideration in money or money's worth, to a disqualified person.
- The plan engages in any other transaction which results in a substantial diversion of its income or corpus to a disqualified person.

The Code defines a disqualified person as the creator of the plan, a person who has made a substantial contribution to the plan, a member of the family of a person who is the creator or substantial contributor, or a corporation controlled by the creator or substantial contributor to the plan.

Treas. Reg. 1.401-1(a)(2)(i) GENERAL PROHIBITION AGAINST AN IN-SERVICE DISTRIBUTION

Members may not receive a monthly retirement benefit or withdraw contributions made by the employer, or earnings on such contributions, before normal retirement and termination of employment, or termination of the plan.

TESTIMONY IN SUPPORT OF HOUSE BILL 119
House State Administration Committee
01/12/99

Presented by:
ROGER A. HAGAN

Officer and Enlisted Associations of the Montana National Guard

Mr. Chairman, members of the committee, for the record my name is Roger A. Hagan. I represent the more than 4,000 members of the Officer and Enlisted Associations of the Montana National Guard. It is my pleasure to rise in support of House Bill 119, relating to the Public Retirement System. I wish to thank you Mr. Chairman for accepting this written testimony on behalf of our Associations in lieu of my personal appearance.

Although this bill has a broad range of changes, there is one specific set of changes that our organizations have been working on with the Public Employee's Retirement System staff. Sections 9, 28, 32, 38 and 41 of House Bill 119 all address the crediting of military service toward the several public retirement systems. The changes crafted by the PERS staff resolve the discriminatory procedures currently in the code. The treatment of members of the military reserve, differently than those not in the military reserve, when determining eligibility for military service credit has been a great concern of our organizations.

Section 9 of the bill provides for dealing with military service credit in the public retirement system in accordance with the Uniformed Service Employment and Reemployment Rights Act (USERRA) of 1994. Members of the military recognize this act as an equitable approach to recognition of the value of military service when applied to other public or private retirement systems.

I wish to recognize, on the record, the great support and professional work provided by the PERS staff. Their sincerity and honesty during our discussions resulted in a successful change effort, acceptable to both our associations and their staff. Your support of this bill is encouraged. If you have any questions, I will be returning to Helena Tuesday evening and will contact your committee secretary to provide any information requested.

Roger A. Hagan
 Legislative Assistant
 1224 Stuart Street
 Helena, MT
 Home Phone (406) 449-8795
 Cell Phone (406) 439-3359

HOUSE OF REPRESENTATIVE ROLL CALL

STATE ADMINISTRATION

COMMITTEE

DATE Jan. 15 1999

NAME	PRESENT	ABSENT	EXCUSED
Rep Allan Walters	/		
Rep Don Hedges	/		
Rep Frank Smith	/		
Rep Darrel Adams	/		
Rep Joan Andersen	/		
Rep Tom Dell	/		
Rep Bill Tash	/		
Rep Jeff Mangan	/		
Rep Doug Mood	/		
Rep Brennan Ryan	/		
Rep George Golie	/		
Rep Doug Wagner	/		
Rep Edith Clark	/		
Rep Monica Lindeen	/		
Rep Bill Thomas	/		
Rep Toni Hagener	/		
Rep Matt Brainard	/		
Sheri Heffelfinger	/		

MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

DATE Jan. 15 1999

BILL NO. 118 & 119

SPONSOR(S) Rep. Mook

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

☒ POI	David Sear	TPS	Teachers' Retirement
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT BRAINARD**, on February 3, 1999 at 8:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Matt Brainard, Chairman (R)
Rep. Toni Hagener, Vice Chairman (D)
Rep. Allan Walters, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joan Andersen (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. George Golie (D)
Rep. Donald L. Hedges (R)
Rep. Monica Lindeen (D)
Rep. Jeff Mangan (D)
Rep. Douglas Mood (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bill Tash (R)
Rep. Bill Thomas (R)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Karen Mills, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s): HB 359, 362, Posted: 1/31/1999
Executive Action: HB 56, 274, 228, 118, 119,
Tabled bills: HB 144, 335

EXECUTIVE ACTION ON HB 119

Motion: REP. MOOD moved HB 119 DO PASS
{Tape : 2; Side : A; Approx. Time Counter : 0.7 - 1}

Discussion:
{Tape : 2; Side : A; Approx. Time Counter : 1 - 5.6}

Discussion:
{Tape : 2; Side : A; Approx. Time Counter : 5.8 - 11.1}

Vote: REP. HEDGES made a motion to DO PASS the amendments.
Vote was unanimous.
{Tape : 2; Side : A; Approx. Time Counter : 12 - 12.2}

Discussion:
{Tape : 2; Side : A; Approx. Time Counter : 5.6 - 12}

Motion: REP. MOOD moved HB 119 DO PASS AS AMENDED.
{Tape : 2; Side : A; Approx. Time Counter : 14.8 - 14.9}

Vote: The motion carried unanimously
{Tape : 2; Side : A; Approx. Time Counter : 14.9 - 17.4}

EXECUTIVE ACTION ON HB 144

Motion: REP. LINDEEN moved HB 144 DO PASS.
{Tape : 2; Side : A; Approx. Time Counter : 19.1 - 19.2}

Discussion:
{Tape : 2; Side : A; Approx. Time Counter : 19.2 - 28.6}

Substitute Motion: REP. TASH made a motion to table.
{Tape : 2; Side : A; Approx. Time Counter : 28.6 - 30.1}

Vote: The motion carried 12-5 to table; REPS. MANGAN, RYAN,
LINDEEN, THOMAS, HAGENER voting no.

EXECUTIVE ACTION ON HB 335

Motion: REP. WALTERS moved HB 335 DO PASS.
{Tape : 2; Side : A; Approx. Time Counter : 30.1 - 31}

Discussion:
{Tape : 2; Side : A; Approx. Time Counter : 31.1 - 31.9}

HOUSE OF REPRESENTATIVE ROLL CALL

_____STATE ADMINISTRATION_____ COMMITTEE

DATE Feb 3 '99

NAME	PRESENT	ABSENT	EXCUSED
Rep Allan Walters	✓		
Rep Don Hedges	✓		
Rep Frank Smith	✓		
Rep Darrel Adams	✓		
Rep Joan Andersen	✓		
Rep Tom Dell	✓		
Rep Bill Tash	✓		
Rep Jeff Mangan	✓		
Rep Doug Mood	✓		
Rep Brennan Ryan	✓		
Rep George Golie	✓		
Rep Doug Wagner	✓		
Rep Edith Clark	✓		
Rep Monica Lindeen	✓		
Rep Bill Thomas	✓		
Rep Toni Hagenner	✓		
Rep Matt Brainard	✓		
Sheri Heffelfinger	✓		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

STATE ADMINISTRATION

COMMITTEE

DATE Feb. 3 BILL NO. 119 NUMBER _____

MOTION: Do pass as amended

NAME	AYE	NO
Rep Allan Walters		
Rep Don Hedges		
Rep Frank Smith		
Rep Darrel Adams		
Rep Joan Andersen		
Rep Tom Dell		
Rep Bill Tash		
Rep Jeff Mangan		
Rep Doug Mood		
Rep Brennan Ryan		
Rep George Golie		
Rep Doug Wagner		
Rep Edith Clark		
Rep Monica Lindeen		
Rep Bill Thomas		
Rep Toni Hagener		
Rep Matt Brainard		
Sheri Heffelfinger		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

STATE ADMINISTRATION

COMMITTEE

DATE Feb 3 BILL NO. 119 NUMBER

MOTION: Do Pass as amended

NAME	AYE	NO
Rep Allan Walters		
Rep Don Hedges		
Rep Frank Smith		
Rep Darrel Adams		
Rep Joan Andersen		
Rep Tom Dell		
Rep Bill Tash		
Rep Jeff Mangan		
Rep Doug Mood		
Rep Brennan Ryan		
Rep George Golie		
Rep Doug Wagner		
Rep Edith Clark		
Rep Monica Lindeen		
Rep Bill Thomas		
Rep Toni Hagener		
Rep Matt Brainard		
Sheri Heffelfinger		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

STATE ADMINISTRATION

COMMITTEE

DATE Feb 3 BILL NO. 119 NUMBER

MOTION: Do Pass unanimous as amended

NAME	AYE	NO
Rep Allan Walters		
Rep Don Hedges		
Rep Frank Smith		
Rep Darrel Adams		
Rep Joan Andersen		
Rep Tom Dell		
Rep Bill Tash		
Rep Jeff Mangan		
Rep Doug Mood		
Rep Brennan Ryan		
Rep George Golie		
Rep Doug Wagner		
Rep Edith Clark		
Rep Monica Lindeen		
Rep Bill Thomas		
Rep Toni Hagener		
Rep Matt Brainard		
Sheri Heffelfinger		

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE**, on February 15, 1999 at
11:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 118, HB 119, 2/10/1999
Executive Action: HB 89, HB 118, HB 119, HB 198,
SB 400

HEARING ON HB 118

Sponsor: REP. DOUG MOOD, HD 58, SEELEY LAKE

Proponents: David Senn, Executive Director, Teachers'
Retirement System

Opponents: None.

purchased. **Mr. Senn** responded they can purchase the salary of their daily rate for time on strike. They pay a formula of 5.7% percent per year of service multiplied by that salary. They pay more than a 100% percent of the salary they lost as the actuarial cost. **SEN. HARGROVE** asked if a person who is a teacher and a legislator was paid for both during the legislature. **Mr. Senn** explained most school districts in the University do not pay teachers who are in the legislature during that legislative service time, but some may pay a partial payment during the legislative service time. **SEN. HARGROVE** asked what the contribution would be for a teacher in the legislature and where it comes from. **Mr. Senn** said under current law, the teacher has an option to contribute on the salary rate of a legislator or the daily salary of a teacher. The salary rate of a legislator is typically lower than that of a teacher. Therefore they typically opt to contribute on their legislative salary, except in the final 3 years when it matters in calculating the final average salary. This is a problem in complying with the IRS regulation of giving people options to select against the system. This bill says those currently in the legislature must make that election within 6 months after taking office or the effective date of this bill. They would contribute on their salary as a member of the Teachers' Retirement System.

SEN. TESTER asked **Mr. Senn** to clarify current portability of people coming in and out of the system and how this bill changes that. **Mr. Senn** said they currently accept contributions from another retirement plan and they do transfer contributions. This bill clarifies the statute the way the IRS would like to see it written. They are not stated specifically under the current law. **SEN. TESTER** asked if this is just a clarification of the law, but won't cause any change. **Mr. Senn** responded he was correct.

SEN. COLE said this bill clears up any contradictions between the IRS and the retirement. The other portion dealt with legislators who are involved with Teachers' Retirement. **Mr. Senn** said he was correct and it also relates to the Internal Revenue Code provision. **SEN. COLE** said the Fiscal Note states this would not have any effect. **Mr. Senn** stated he was correct.

Closing by Sponsor:

REP. MOOD closed.

HEARING ON HB 119

Sponsor: **REP. DOUG MOOD, HD 58, SEELEY LAKE**

Proponents: **Mike O'Connor, Executive Director, Public
Employees Retirement System
Don Waldron, Montana Rural Education Association**

Opponents: None.

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, Seeley Lake, sponsored this bill on behalf of the Public Employee Retirement Board. He explained this bill is to ensure they remain qualified as a plan for the benefit of the members.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 41 - 49}

Mike O'Connor, Executive Director, Public Employees Retirement System, explained they hired an outside tax counsel to review all the statutes of the retirement systems to make sure they comply with IRS. This bill incorporates the changes needing to be addressed in the statutes **EXHIBIT(sts37a02)**. They are attempting to fine tune the retirement statutes to make sure they maintain qualified plan status. When they are done with this, they are going to submit their plan document and **HB 119** to the IRS for a private letter of ruling to make sure their plans meet the qualification requirements of the IRS. They are also trying to take advantage of the favorable tax treatments available through the IRS. Many of the sections are similar to **HB 118**.

The first 3 sections of the bill address the Social Security chapter. The Social Security Administration assessed a 39 million dollar bill. The Public Employees Retirement System gathered all the information from local government and got the 39 million down to 2.1 million. They collected contributions and interest from all state and local governments for the 2.1 million. They did have to pay the contributions for that time period, but they reduced the interest charge 70 percent. When they settle this, they will pay the Social Security contributions and 30 percent of the interest and refund 70 percent of the interest to state and local governments.

The first 3 sections say the administration of the Social Security part go to the Department of Administration for storage of the records. It will cost \$140 per year to store those records. The Public Employees Retirement System has paid the bill to settle this agreement, so they want to reimburse PERS for cost of the settlement.

{Tape : 1; Side : B; Approx. Time Counter : 49 - 69}

Section 6 deals with members receiving refunds and specifies when a refund can happen. The IRS allows public and private plans to refund contributions of \$200 or less without an application. Section 6 allows the refund if it is a dormant account. People who have balances of \$200 to \$5,000 can be refunded if they are non-vested. This gives them a pro-active approach so they do not increase the number of dormant accounts.

Title 19, Chapter 2, addresses all the retirement systems they administer. They have a separate chapter for each retirement system they administer for specific things pertaining only to individual retirements systems. Chapter 2 addresses all retirement systems and takes advantage of favorable tax treatments from the IRS. The employer pick up is found here. Members can purchase service with pre-tax money if they file an irrevocable election. They have people who purchase service years, therefore they do not want to eliminate it. They want their members to be able to purchase with pre-tax money in order to eliminate the 415 limits. They are cleaning up the other retirement statutes and putting all the information relating to service purchases in Chapter 2. They addressed the military service purchase. In order for retirement plans to comply with the IRS, they must comply with USERRA. There are some sections of military service that are more restrictive than Federal law allows. They are striking the restrictive sections and making sure each section addressing military services complies with Federal law.

Section 10 deals with the ability of members to roll over into the system and be able to purchase service. The IRS also sets limits on how much a retirement plan can pay out. Sections 12, 13, and 16 address what they can pay out and when they can pay out benefits. There are required distributions the IRS is looking for. The outside tax council had an issue with optional service. There are groups of people who have the option of joining PERS. The IRS has a problem giving a person the option of electing into PERS at any time during their career and it doesn't meet the qualification rules. They are going to allow people to opt into the system, but they must make an election within 6 months of their hire date. This does not prevent them from purchasing service at a later date.

Section 43 eliminates language allowing mental health corporations to join the system. Mental health corporations are non-governmental and the statute does not allow non-governmental agencies to be a member of the system. They currently have one mental health corporation. The members currently in the system will continue to be in the system, but any new hires would not be

able to be members of the system. They are repealing the section on public administrators, so public administrators are treated like any other government employee.

Don Waldron, Montana Rural Education Association, is in support of this bill. He said they will work to get the new information out to their employees.

Questions from Committee Members and Responses:

SEN. TESTER asked **Mr. O'Connor** if it is in the law that PERS can exempt other privatizations in government. **Mr. O'Connor** said several years ago there was a move to privatize county hospitals. Once they are privatized, the members who are employees of that hospital have an option to retire or roll over into another system. When this happens, they work with the individual agencies to inform people of their options and what is available to them. Once they are privatized, they are not able to be members of PERS. **SEN. TESTER** asked him to clarify the statute regarding mental health corporations. **Mr. O'Connor** said that the statute allowed them to be members of PERS and they are striking that statute. **SEN. TESTER** said this is specific to mental health corporations and asked if **Mr. O'Connor** has the ability to not allow people in government agencies that become privatized to be a part of PERS, as long as they are new hires and are not vested. **Mr. O'Connor** said that was correct.

SEN. HARGROVE asked what is a qualified plan and who determines whether it can be rolled over into PERS. **Mr. O'Connor** said the IRS determines what a qualified plan is and who can roll over into it. They have regulations saying any qualified plan can roll over into another qualified plan. **SEN. HARGROVE** asked if there was a definition of a qualified plan. **Mr. O'Connor** said they will be applying to the IRS for a letter of determination. If someone wanted to roll over into the system, they would ask for the qualification letter from IRS. **SEN. HARGROVE** asked what a public administrator is. **Mr. O'Connor** explained a public administrator is an individual who takes care of indigent people who have died, including their records, their burial, and locating their relatives.

SEN. COLE asked if taking retirement at 70 1/2 years of age is a federal law or a state law. **Mr. O'Connor** stated it was a federal rule and added it applies to government and private plans.

Closing by Sponsor:

REP. MOOD closed.

{Tape : 1; Side : B; Approx. Time Counter : 69 - 81}

EXECUTIVE ACTION ON HB 118

Motion/Vote: SEN. WELLS moved that HB 118 BE CONCURRED IN.

Motion carried 5-0.

EXECUTIVE ACTION ON HB 119

Motion/Vote: SEN. TESTER moved that HB 119 BE CONCURRED IN.

Motion carried 5-0.

EXECUTIVE ACTION ON SB 400

Motion/Vote: SEN. WELLS moved that SB 400 BE REMOVED FROM THE TABLE. Motion carried 4-1 with SEN. WILSON voting no.

Motion: SEN. WELLS moved that SB 400 DO PASS.

SEN. WELLS explained he would like to discuss it on the Floor of the Senate. He understands the objections from the school boards. However, he thinks there are a lot of advantages to this change.

SEN. HARGROVE stated he would vote to have it passed, but would like for someone to bring up the concerns about the school busses.

Vote: Motion carried 4-1 with SEN. WILSON voting no.

EXECUTIVE ACTION ON HB 198

Motion/Vote: SEN. WELLS moved that HB 198 BE CONCURRED IN.

Motion carried 5-0.

EXECUTIVE ACTION ON HB 89

Motion/Vote: SEN. TESTER moved that HB 89 BE CONCURRED IN.

Motion carried 5-0.

TABLE OF PROPOSED QUALIFICATION LEGISLATION (HB119)

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This table contains a very brief summary by PER Board staff of the major provisions of HB119 as amended. It should not be considered definitive legal authority nor indicative of Board or legislative intent.

Section	Statute	Proposed Change	Reason
1, 2, 3	19-1-102	Transfers responsibility for administration of Social Security functions in Title 19 Chapter 1, MCA, to the Department of Administration.	Retirement trust fund money should not be used to administer Social Security functions. This change will bring Chapter 1 in to compliance with Article VIII Section 15 of the Montana Constitution. Section 15 requires the retirement system trust funds be used only to provide benefits to participants and to defray administrative expenses of the retirement system. In addition, Internal Revenue Code (IRC) §401(a) says the trust assets must be used exclusively for benefits to retirement system members or their beneficiaries.
	19-1-202	Cost to administer the state Social Security contract in the future will be paid by the Department of Administration.	Future costs will be minimal. The cost to store the records. The Department of Administration has agreed to absorb costs because the state's social security trust account will revert to the general fund before 7/1/99 (see next section).
	19-1-602	Cost to administer the state Social Security contract administration before 7/1/99 will be paid by the social security trust account.	Montana Constitutional and federal law requirements make change necessary (see first section).
4	19-2-303	Defines "Internal Revenue Code" and "Plan Year."	Defines the term as used in Chapters 3, 5 through 9, and 13 of Title 19.
5	19-2-505	Prevents the Board from entering transactions prohibited by the Internal Revenue Code	IRC sections 503(b) describes transactions which are prohibited under the Code. If the Board were to engage prohibited transactions, the retirement plans could lose their tax exempt status.
6	19-2-602	Specifies the requirements for members to receive a refund or a rollover distribution of their accumulated contributions. It also allows the Board to distribute smaller accounts without an application for a refund or rollover.	IRC specifies requirements for rollover distributions and compliance is necessary to ensure IRS qualification of the Plans administered by the Board. This statute also provides for a proactive approach to minimizing dormant accounts. Sections 19-2-602(3), (4) and (5) did not comply with IRC.

Section	Statute	Proposed Change	Reason
7 22-26 28,30, 33 35, 36 39, 42	19-2-704	Members can currently make a lump sum payments to purchase service or the service may be purchased by installment payments. New language allows installment payments to be tax deferred if the employee makes the payments by payroll deduction. Eliminates language dealing with service purchase payments.	Employee installment payments are made tax deferred by using IRC §414(h) rules for employer deduction of payments from the employee. Section 19-2-704(2) was stricken from this section and moved to new Section 11 because it dealt only with transfers from other Montana retirement systems. IRC §415 limits were incorporated. Language is redundant, service purchase payments are covered in Title 19 chapter 2 for all retirement systems administered by the Board.
8	19-2-706	Eliminates payment of a refund of an incomplete service purchase to the member. Also gives employers credit (rather than refunds) for contributions the employer improperly paid to the retirement system.	Any payment to the member can be considered an "in-service distribution" (distribution prior to retirement) which is prohibited by IRC.
9 21,28,32 38,41, 44		Current language for purchasing military service was discriminatory and was eliminated.	Comply with IRC §414(u) and with the Uniformed Services Employment and Reemployment Rights Act (USERRA).
10	New	Allows a member to rollover money from any other qualified plan to the Plans administered by the Board. The rollover may only be used to purchase service.	Increases portability by allowing members to roll money into the plans administered by the Board.
11	New	Essentially, old language from 19-2-704(2), cleaned up and moved to a new place.	See explanation for Section 7, above. This addresses Transfers between systems.
12,13,16	19-2-902 19-2-908 19-2-1007	For a benefit of less than \$5000 total actuarial present value, the Board may pay the benefit in a lump sum. Payment of partial month benefits on death is clarified. All plan accounts must be distributed in compliance with IRS requirements and this amendment allows the Board to comply even without a written application. All plan accounts must be distributed in compliance with IRS requirements (generally by age 70½ or, if later, on retirement) and this amendment allows the Board to comply	Ensures plans comply with IRC §401(a)(9) which requires distributions be made timely. Eliminates difficult and costly small payments.
14	19-2-1001	Specifies limits on the contributions a member make and the maximum benefits the member may receive.	Compliance with IRC § 415(b), annual benefit limits, and §415(c), contribution limit.
15	19-2-1006	Clarifies what forfeitures are and how they may be used.	Forfeitures can't be used to increase plan benefits.

Section	Statute	Proposed Change	Reason
17	19-2-1010	Describes what constitutes the retirement plan for qualification requirements.	Compliance with IRC §401(a) requirements for a tax deferred retirement plan and §414(d) requirements for a governmental plan.
18, 27 31, 34 37, 40		Clarify the definition of "compensation" and "final average salary."	Primarily clarifying and coordinating with tax-deferred deductions for service purchases and other deductions.
19	19-3-318	Gives employers a credit (rather than a refund payment) for improperly paid contributions.	Payments to employers may be considered payments for purposes other than the benefit of members and is disallowed under IRC §401(a)(2).
20	19-3-412	Requires members who are eligible for optional membership to make an irrevocable election within 180 days.	Compliance with IRC §401(a), also necessary as a practical consequence of limitations on service purchases.
43	53-21-204	Eliminated language allowing mental health corporations to join the Public Employees' Retirement System (PERS).	These corporations are non-governmental by statutory definition and are not eligible to join the PERS, a governmental retirement plan under the IRC §401(a).
44	19-3-520	Repeals special membership status for public administrators	Same as section 20, requires public administrators to be treated as any other governmental employee or independent contractor as appropriate.
45	NA	Codification Instruction.	
46	NA	Coordination Instructions	
47	NA	Effective dates.	

DATE Feb. 15, 1999

[illegible]



SENATE STANDING COMMITTEE REPORT

February 15, 1999

Page 1 of 1

Mr. President:

We, your committee on State Administration report that House Bill 119 (third reading copy - blue) be concurred in.

Signed: 
Senator Mack Cole, Chair

To be carried by Senator Sue Bartlett

- END -

Committee Vote:
Yes 5, No 0.

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DATE February 15, 1999

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: ~~HB~~ 118, ~~HB~~ 119

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mike O'Connor	444-3154	PERS	119	X	
Eric Fearon	442-4250	MFA/MFT	118/119	X	
Don Waldron	443-2629	MFA -	118/119	✓	
David Senn	444-3376	TRS	HB 118	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

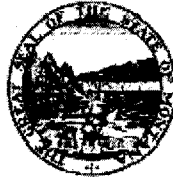
1999 Montana Legislature

About Bill -- Links

HOUSE BILL NO. 119

INTRODUCED BY D. MOOD

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD



AN ACT RELATING TO PUBLIC RETIREMENT SYSTEMS; AMENDING RETIREMENT SYSTEM-RELATED STATUTES TO COMPLY WITH INTERNAL REVENUE CODE REQUIREMENTS FOR TAX-DEFERRED QUALIFIED RETIREMENT PLANS; PROVIDING FOR WITHHOLDING AND EMPLOYER PICKUP OF AMOUNTS USED BY PUBLIC EMPLOYEES TO QUALIFY OR PURCHASE RETIREMENT SERVICE; REMOVING MENTAL HEALTH CORPORATIONS FROM THE ENTITIES THAT ARE ALLOWED TO JOIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; AMENDING SECTIONS 19-1-102, 19-1-202, 19-1-602, 19-2-303, 19-2-505, 19-2-602, 19-2-704, 19-2-706, 19-2-902, 19-2-908, 19-2-1001, 19-2-1006, 19-2-1007, 19-2-1010, 19-3-108, 19-3-318, 19-3-412, 19-3-503, 19-3-504, 19-3-505, 19-3-512, 19-3-513, 19-5-409, 19-6-101, 19-6-801, 19-6-803, 19-6-804, 19-7-101, 19-7-803, 19-7-804, 19-8-101, 19-8-904, 19-8-905, 19-9-104, 19-9-403, 19-9-411, 19-13-104, 19-13-403, 19-13-405, AND 53-21-204, MCA; REPEALING SECTIONS 19-2-705 AND 19-3-520, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 19-1-102, MCA, is amended to read:

"19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision of the state.

(2) (a) The term "employment" means any service performed by an employee in the employ of the state or any political subdivision of the state for the employer, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state

and the secretary of health and human services entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the governor issues, with respect to the service, a certificate to the secretary of health and human services pursuant to 19-1-304.

(3) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as the codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954 and as the codes may from time to time be amended.

(4) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a juristic entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, such as but not limited to school districts and housing authorities.

(5) The term "secretary of health and human services" means the secretary of the United States department of health and human services; includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function.

(6) The term "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

(7) The term "state agency" means the ~~public employees' retirement board of the public employees' retirement system of the state of Montana~~ department of administration provided for in 2-15-1001.

(8) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act."

Section 2. Section 19-1-202, MCA, is amended to read:

"19-1-202. Costs of administration. All costs allocable to the administration of this chapter must be charged to the ~~pension trust fund of the public employees' retirement system. The amount of administrative costs not defrayed by interest and income earned upon the contribution account, which had been credited to the pension trust fund of the public employees' retirement system, as provided in~~

~~19-1-602, prior to July 1, 1987, must be paid to the state agency for deposit to the pension trust fund of the public employees' retirement system by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions state agency."~~

Section 3. Section 19-1-602, MCA, is amended to read:

"19-1-602. Management of account. (1) All money in the account must be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency has full power, authority, and jurisdiction over the account, including all money and property or securities belonging to the account. ~~†~~ The state agency may perform any acts, whether or not specifically designated, that are necessary to the administration of the account and that are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account as part of the unified investment program described in Title 17, chapter 6, part 2. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the state general fund.

(4) By the end of the fiscal year during which all payments determined to be due and payable from the state to the social security administration and the state agency's administrative expenses necessary to administer this chapter have been paid, the state agency shall transfer any funds remaining in the contribution account to the state general fund."

Section 4. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the division for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Division" means the public employees' retirement division of the department of administration.

(17) "Employee" means a person who is employed by an employer in any capacity and whose salary is paid by the employer.

(18) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(19) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

- (a) the position exists to perform the element;
- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

(20) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the

following June 30.

(21) "Inactive member" means a member who is not an active or retired member.

(22) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

~~(22)~~(23) "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

~~(23)~~(24) "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(24)~~(25) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

~~(25)~~(26) "Pension" means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

~~(26)~~(27) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

~~(27)~~(28) "Regular contributions" means contributions required from members under a retirement system.

~~(28)~~(29) "Regular interest" means interest at the rate set from time to time by the board.

~~(29)~~(30) "Retirement" or "retired" means the status of a member who has terminated from service and has received and accepted a retirement benefit from a retirement system.

~~(30)~~(31) "Retirement benefit" means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

~~(31)~~(32) "Retirement system" ~~or, "system", or "plan"~~ means one of the public employee retirement systems enumerated in 19-2-302.

~~(32)~~(33) "Service" means employment of an employee in a position covered by a retirement system.

~~(33)~~(34) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(34)~~(35) "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

~~(35)~~(36) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

~~(36)~~(37) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(37)~~(38) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(38)~~(39) "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

~~(39)~~(40) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

Section 5. Section 19-2-505, MCA, is amended to read:

"19-2-505. Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of the ~~department~~ board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the division; ~~or~~

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board."

Section 6. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions at the member's request, on written application by the member. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who terminates from service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination without a written application from the member.

(3) A nonvested member who terminates from service with accumulated contributions of \$200 to \$5,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination, unless a written application is made pursuant to subsection (4).

~~(2)~~(4) Upon the written ~~request~~ application of a terminating member with \$200 or more of accumulated contributions, the division shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) of the eligible portion of a refund of the member's accumulated contributions. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The terminating member shall designate the eligible retirement plan on forms provided by the division. Amounts of the member's accumulated contributions that are not eligible for direct rollover distribution must be paid to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution.

~~(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.~~

~~(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.~~

~~(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written request."~~

Section 7. Section 19-2-704, MCA, is amended to read:

"19-2-704. Purchasing service credits allowed -- payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to contribute amounts in addition to the mandatory employee contributions required by the retirement system in which the member participates for the purpose of purchasing service credits as provided by the statutes governing the retirement

system.

~~(2) A member eligible to qualify service under the provisions of 19-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404 may, at any time prior to retirement, elect to transfer all or a portion of the member's accumulated contributions on deposit in a pension trust fund from which service is being transferred to the pension trust fund of another plan in which service is being credited. The transfer of contributions may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the accumulated contributions on deposit in a pension trust fund is being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall identify at the time of the transfer the taxed and tax-deferred amounts being transferred.~~

(3) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase, qualify, or transfer service credits, membership service, or contributions.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service as provided by the statutes governing the retirement system to which the member belongs may make a lump-sum payment, installment payments, or a combination of a lump-sum payment and installment payments.

(4) Installment payments must be paid directly to the board, unless the member makes payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer a binding, irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be executed by the member and the member's employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;

(d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

(e) must specify that the contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been received by the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's

earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) A contract for installment payments initiated before July 1, 1999, may be made only if the member executes a written application and authorization for payroll deductions pursuant to this section. If the member does not execute a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may make more than one binding, irrevocable payroll deduction authorization as long as a subsequent deduction authorization does not amend a previous binding, irrevocable authorization. A member may not prepay an amount under a binding, irrevocable payroll deduction.

(7) If a member terminates service or dies before completing all payments required by a payroll deduction authorization made pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid as of the date of termination unless further payment is made as provided in this subsection. In the case of a termination, the member may make a lump-sum payment for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 8. Section 19-2-706, MCA, is amended to read:

"19-2-706. Additional service for member involuntarily terminated from membership service.

(1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection (3) if:

(a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature on or after July 1, 1997, but before July 1, 1999;

(c) the employee is eligible for a normal service retirement or early retirement under the applicable

provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service purchased under this section is the total actuarial cost of purchasing the service based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, or 19-8-904. The employer-paid portion applied toward the service purchase must be calculated using the formula $A \times B \times C$ when:

(a) A is equal to a maximum of 3 additional years of service that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service purchased by the terminated employee.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service to be purchased and the amount contributed by the employer under subsection (3). ~~A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section. A~~ member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year forfeits the additional service. The employer's contribution to purchase that member's additional service, minus any retirement benefits already paid, must be ~~refunded~~ credited to the employer. As used in this subsection, the same jurisdiction means all agencies of the state, including the university system."

Section 9. Qualified military service. Notwithstanding any other provision of state law governing a retirement system, contributions, benefits, and service credit for qualified military service are governed by section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994.

Section 10. Rollover of contributions. (1) A member who wishes to and is eligible to qualify service from another retirement system or plan into a retirement system provided for in 19-2-302 may,

prior to retirement, make written application to the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent permitted by section 401(a)(31) of the Internal Revenue Code.

Section 11. Transfer of service and contributions from other Montana public employee retirement systems. (1) A member eligible to transfer service, pursuant to 9-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, or 19-13-404, into the system to which the member belongs shall complete the transfer prior to the member's retirement.

(2) The accumulated contributions to be transferred by the member may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the member's accumulated contributions on deposit in a pension trust fund are being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall at the time of the transfer identify the taxed and tax-deferred amounts being transferred to the board.

Section 12. Section 19-2-902, MCA, is amended to read:

"19-2-902. ~~Frequency of benefit payments~~ Payment of benefits. (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter must be payable in monthly installments, except ~~that the board may elect to convert payments of at least \$20 per year to a single sum of actuarial equivalent value as provided in this part.~~

(2) If the total actuarial present value of a benefit payable to a member or beneficiary is equal to or less than \$5,000, the board shall pay the present value of the benefit to the member or beneficiary in a single lump sum unless the member or beneficiary chooses to receive a monthly benefit. The lump sum must be paid at the time the initial monthly benefit would otherwise be payable. An election to receive a monthly benefit must be made at least 30 days prior to the first payment date.

(3) ★ If a benefit recipient dies before the last day of the month, a smaller pro rata amount may otherwise payable to the payment recipient must be paid for part of a month when the retirement benefit ends before the last day of the month to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate."

Section 13. Section 19-2-908, MCA, is amended to read:

"19-2-908. Time of commencement of benefit. (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility

requirements, terminated covered service, and filed the appropriate written application. However, the board may on its own accord and without a written application begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before terminating covered service, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following receipt of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits commence on the first day of the month following the official's last full month in office. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating final average salary under the retirement system in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) The disability retirement benefit payable to a member must commence on the day following the member's termination from service.

(4) Monthly survivorship benefits must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board."

Section 14. Section 19-2-1001, MCA, is amended to read:

"19-2-1001. Maximum contribution and benefit limitation limitations. ~~A monthly benefit (1) Employee contributions paid to and retirement benefits paid under from the retirement systems may not exceed the annual limits on contributions and benefits as specified in, respectively, allowed by section 415 of the Internal Revenue Code of 1986 and adjusted annually by the commissioner of internal revenue.~~

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code.

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the retirement system's law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member in order to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code.

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits

imposed by section 415(c) of the Internal Revenue Code, the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) The limitation year for purposes of section 415 of the Internal Revenue Code is the calendar year beginning each January 1 and ending December 31.

(5) "Salary" or any other similar term used for the purposes of determining compliance with section 415 of the Internal Revenue Code includes the amount of an elective deferral, as defined in section 402 (g) of the Internal Revenue Code, or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of sections 125, 403(b), or 457 of the Internal Revenue Code."

Section 15. Section 19-2-1006, MCA, is amended to read:

"19-2-1006. Use of forfeitures. A retirement system subject to this chapter may not apply forfeitures of benefits resulting from the member's termination of employment, the death of the member, or another reason to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8). However, forfeitures may be used to reduce the costs of administration of a retirement system subject to this chapter."

Section 16. Section 19-2-1007, MCA, is amended to read:

"19-2-1007. Required distributions. The benefits payable by the retirement systems subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) Benefits must begin by the later of April 1 of the calendar year following the plan calendar year in which the member reaches 70 1/2 years of age or retires, whichever is later April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the year following the calendar year in which the member attains age 70 1/2 or April 1st of the year following the calendar year in which the member terminates employment, whichever is later, the board shall begin distribution of the benefit as required by the retirement system to which the member belongs or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.

(2) The member's entire interest in the retirement system must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary. Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations implementing that section.

(3) The life expectancy of a member or the member's beneficiary may not be recalculated after payment of the benefits has begun.

(3)(4) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed beginning within 3 months of notification to the board of the death of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be

distributed at least as rapidly as under the method of distribution prior to the member's death.

~~(4)~~(5) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, payable over the life or life expectancy of the spouse, and that begins no later than the date the member would have reached 70 1/2 years of age. Distributions to a member's beneficiary must begin as soon as administratively feasible, but must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by that date, payment to the beneficiary must be made in the form of a lifetime monthly benefit payment if the beneficiary is eligible for a monthly benefit or in a lump sum if that is the only benefit payable to the beneficiary.

~~(5)~~(6) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code."

Section 17. Section 19-2-1010, MCA, is amended to read:

"19-2-1010. Retaining qualified plan status -- content of plan document -- board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code. If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal Revenue Code or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code and with consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the system plan to retain tax-deferred its qualified status.

(2) For the purposes of section 401(a) of the Internal Revenue Code, the plan document for each retirement system is composed of the applicable provisions of the Montana constitution, this chapter, the applicable chapter in Title 19 governing the system, and applicable rules adopted by the board.

(3) The board may adopt rules to implement this section."

Section 18. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer before any pretax deductions allowed by state or federal law are made. Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a).

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer, except that a nonprofit mental corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

(4) "Employer contributions" means payments to the pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(5) "Final average salary", ~~except as provided in 19-3-520,~~ means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation."

Section 19. Section 19-3-318, MCA, is amended to read:

"19-3-318. Refund Credit of employer contribution made after termination. Employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system, as provided in 19-3-403(4), must be ~~repaid~~ credited to the employer."

Section 20. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) The following employees in covered employment may become members of the retirement system at their option ~~at any time during their employment in a covered position~~ by filing ~~a membership card~~ an irrevocable, written application with the board within 180 days of commencement of their employment:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) part-time employees serving in employment that does not exceed a total of 960 hours of employment covered by this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes in counties of the third, sixth, and seventh class.

(2) Employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written

application with the board.

~~(2)~~(3) If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement.

(4) If an employee or official fails to file with the board an irrevocable written application within the time allowed in this section, the employee or official waives membership."

Section 21. Section 19-3-503, MCA, is amended to read:

"19-3-503. Election to qualify military service. (1) (a) Except as provided in subsection (2), a member with 10 years or more of service credits may, at any time prior to retirement, make a written election with the board to purchase service credits for all or any portion of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to ~~19-2-705~~ [section 9] or is ineligible under subsection (2)(a).

(b) To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system.

(2) ~~(a)~~ If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit, the member may not qualify the member's military service under subsection (1).

~~(b) However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the armed conflict, December 7, 1941, to August 15, 1945, is not more than 25% of the total sum of all years of military service including reserve and active duty time."~~

Section 22. Section 19-3-504, MCA, is amended to read:

"19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for this period unless the member complies with subsections (2) ~~through (4)~~ and (3), in which case the absence is considered as time spent in service for both service credits and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence plus regular interest

accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

~~(4) Payment of the employee's contributions that are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service.~~

~~(5) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which retirement benefits are received if the member retires during the absence."~~

Section 23. Section 19-3-505, MCA, is amended to read:

"19-3-505. Qualification of previous employment with employer. (1) Subject to the provisions of this section, any person who has employment with an employer that is not service may convert all or a portion of the employment to membership service by filing written notice with the board.

(2) (a) The person shall pay to the retirement system the sum of the amount that the person and the person's employer would have contributed during the period of service converted if the employer had been an employer covered by the retirement system and the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(b).

(b) The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board shall determine the eligibility of all service credit requests.

~~(4) Payment may be made in one sum at the time of filing notice or by making additional contributions on an installment basis before retirement. Failure to make regular monthly payments in any month in which the member receives normal compensation forfeits the person's right to make any further installment payments, unless permission is granted by the board."~~

Section 24. Section 19-3-512, MCA, is amended to read:

"19-3-512. Qualification of service from other public retirement systems. (1) A member with 5 or more years of membership service in the public employees' retirement system may qualify:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not qualify more than 5 years of service under this section. To qualify this service, a member shall:

(a) at any time before retirement make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board based on the most recent actuarial valuation of the system.

~~(3) Contributions to qualify service under this section may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

~~(4)~~ Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-3-503.

~~(5)~~(4) Service qualified under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the accumulated contributions made to qualify the service."

Section 25. Section 19-3-513, MCA, is amended to read:

"19-3-513. Election to purchase additional service. (1) At any time before retirement, a person who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified under the retirement system, up to a maximum of 5 years of additional service.

(2) For each year of service credit purchased under this section, a member shall contribute to the

pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) (a) Except as provided in subsection (3)(b), a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for service retirement."

Section 26. Section 19-5-409, MCA, is amended to read:

"19-5-409. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than 5 years of service under ~~19-2-705~~ [section 9] and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 27. Section 19-6-101, MCA, is amended to read:

"19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made and exclusive of maintenance, allowances, and expenses.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of service may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a member."

Section 28. Section 19-6-801, MCA, is amended to read:

"19-6-801. Election to qualify military service. (1) A member with 15 years or more of service credit with the Montana highway patrol may, at any time prior to retirement, make a written election with the division to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to ~~19-2-705~~ [section 9].

(2) To qualify this service:

(a) a member not covered by 19-6-710 shall contribute to the account the amount determined by the division to be due based on the member's compensation and regular contribution rate as of the member's 16th year and as many succeeding years as are required to qualify this service, with interest from the date the member becomes eligible for this benefit to the date the member contributes. The member may not qualify more of this service than the member has service with the Montana highway patrol in excess of 15 years.

(b) a member covered by 19-6-710 shall contribute the actuarial cost of the service credit based on the most recent actuarial valuation of the system."

Section 29. Section 19-6-803, MCA, is amended to read:

"19-6-803. Election to qualify law enforcement service performed in another state. (1) Except as provided in subsections ~~(4)~~ (3) through ~~(6)~~ (5), a member with 5 years or more of membership service in the retirement system may qualify 1 year of out-of-state law enforcement employment for each year of service credit under the retirement system, up to a maximum of 5 years, provided that the member is

not eligible to receive a retirement benefit for that out-of-state law enforcement employment.

(2) To qualify this service, a member shall:

(a) at any time before the member's retirement, make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the retirement system, as determined by the board, based on:

(i) the member's compensation for the 12 months immediately preceding the date of the member's election to cover the service under the retirement system; and

(ii) the total contribution rate in effect at the time of purchase of service.

~~(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board.~~

~~(4)~~(3) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-6-801.

~~(5)~~(4) Service qualified under this section may not be used in calculating a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the contributions made to qualify the service.

~~(6)~~(5) The combined total service qualified under this section and military service qualified under 19-6-801 may not exceed 5 years."

Section 30. Section 19-6-804, MCA, is amended to read:

"19-6-804. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ [section 9], 19-6-801, 19-6-803, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 31. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff. The board shall adopt rules incorporating both the peace officers standards and training council's current law enforcement training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs who are eligible for membership in this retirement system."

Section 32. Section 19-7-803, MCA, is amended to read:

"19-7-803. Election to qualify previous military service. (1) A member with 15 years or more of service credit may, at any time prior to retirement, make a written election with the board to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, except as provided in subsection (3), if the member is not otherwise eligible to receive credit. To qualify military service, the member shall contribute to the account the actuarial cost of granting the service, to be determined by the board based on the most recent actuarial valuation of the system. The member may not qualify more of the member's military service than the member has service credits in the sheriffs' retirement system in excess of 15 years. Military service purchased under this section is not membership service and may not be used in determining eligibility for a service retirement benefit.

(2) If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify the member's military service under subsection (1). ~~However, a member who is serving or has served in the military reserves with the expectation of~~

~~receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time.~~

(3) The combined total purchase of additional years of service under the provisions of 19-7-804 and this section may not exceed 5 years."

Section 33. Section 19-7-804, MCA, is amended to read:

"19-7-804. Election to purchase additional service. (1) Except as provided in subsection ~~(6)~~ (5), at any time before retirement, a member may make a written election with the board to purchase 1 additional year of service credit for every 5 years of membership service.

(2) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.

(3) To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

~~(4) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board. Payments must be completed prior to retirement.~~

~~(5)~~ Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify for the purchase of military service under 19-7-803.

~~(6)~~(5) The combined total of additional years of service purchased under the provisions of 19-7-803 and this section may not exceed 5 years."

Section 34. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service upon which contributions were made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation appointed as a peace officer pursuant to 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 35. Section 19-8-904, MCA, is amended to read:

"19-8-904. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ [section 9], 19-8-901, 19-8-903, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 36. Section 19-8-905, MCA, is amended to read:

"19-8-905. Absence due to injury or illness. (1) Time, not to exceed 5 years, during which a member is absent because of an injury or illness is considered membership service if, within 1 year after

the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for the absence unless the member complies with subsections (2) ~~through (4)~~ and (3), in which case the absence is considered as time spent in service for both service credits and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute an amount equal to the contributions that the member would have made on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

~~(4) Payment of the employee's contributions due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service.~~

~~(5)~~ A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which benefits are received if the member retires during the absence."

Section 37. Section 19-9-104, MCA, is amended to read:

"19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means the remuneration, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, that a member receives as an active police officer paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made.

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) "Final average compensation" means the monthly compensation of a member, averaged over the last 36 months of the member's service or, in the event a member has not been a member that long, over the period of membership.

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 5 years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(8) "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

(9) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(10) "Survivor" means a surviving spouse or dependent child of the member."

Section 38. Section 19-9-403, MCA, is amended to read:

"19-9-403. Election to qualify previous military service. (1) A member with 15 years or more of service credit may, at any time prior to retirement, make a written election with the board to qualify up to a maximum of 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits if the member is not otherwise eligible to receive credit. To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board based on the most recent actuarial valuation of the system. The member may not qualify more of the member's military service than the member has service credit in excess of 15 years.

(2) If a member has retired from active duty in the armed forces of the United States with a normal military service retirement benefit, the member may not qualify the member's military service under subsection (1). ~~However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time."~~

Section 39. Section 19-9-411, MCA, is amended to read:

"19-9-411. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of

calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ [section 9], 19-9-403, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 40. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, ~~paid by an employer for the firefighter's service as a firefighter~~ out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code have been made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, if the member has not been a member that long, over the period of the member's service. Lump-sum payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of \$300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 41. Section 19-13-403, MCA, is amended to read:

"19-13-403. Election to qualify previous military service. (1) A member with 15 years or more service credit may, at any time prior to retirement, make a written election with the board to qualify all or any portion of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service under ~~19-2-705~~ [section 9]. To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board based on the most recent actuarial valuation of the system. A member may not qualify more of the member's military service than the member has service credit in excess of 15 years. Military service purchased under this section may not be used in determining the member's eligibility for a service retirement.

(2) If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify military service under subsection (1). ~~However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the active~~

~~duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time."~~

Section 42. Section 19-13-405, MCA, is amended to read:

"19-13-405. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ [section 9], 19-13-403, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 43. Section 53-21-204, MCA, is amended to read:

"53-21-204. Mental health corporations. (1) Mental health regions must be established in the state mental health plan and must conform to the mental health regions as established in the state mental health construction plan promulgated by the department under the federal Community Mental Health Centers Act.

(2) The mental health regions must be established under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations may not be considered agencies of the department or the state of Montana. ~~However, they may retain and enter into retirement programs as established under Title 19, chapter 3.~~

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board consists of three members-at-large who must be chosen according to the corporate bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

- (i) persons with severe and disabling mental illnesses; and
- (ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following four groups:

- (i) parents of children with emotional disturbances;
- (ii) advocates of mental health services for the elderly;
- (iii) health care professionals; or

(iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

(4) This section does not prohibit a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board must be established under guidelines adopted by the bylaws of the corporation. All appointments to the board must be for terms of 2 years, and the department must be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of money and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, taxes, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part must be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members must be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget,

specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(9) The regional board of mental health, with the approval of the department, shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with subsection (6)(d)."

Section 44. Repealer. Sections 19-2-705 and 19-3-520, MCA, are repealed.

Section 45. Codification instruction. [Sections 9, 10, and 11] are intended to be codified as an integral part of Title 19, chapter 2, part 7, and the provisions of Title 19, chapter 2, part 7, apply to [sections 9, 10, and 11].

Section 46. Coordination instruction. If House Bill No. 79 and [this act] are both passed and approved, then:

(1) subsection (32) in [section 4] of [this act], amending the definition of "Retirement system" in 19-2-303, must read as follows: "(32) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302."

(2) [section 23], amending 19-2-1001, in House Bill No. 79 is void.

(3) [section 15] of [this act], amending 19-2-1006, must read as follows:

"Section 15. Section 19-2-1006, MCA, is amended to read:

"19-2-1006. Use of forfeitures. A retirement ~~system plan~~ subject to this chapter may not apply forfeitures of benefits resulting from the member's termination of employment, the death of the member, or any other reason to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8). However, forfeitures may be used to reduce the costs of administration of a retirement plan subject to this chapter."

Section 47. Effective dates -- contingent effective date. (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1999.

(2) [Sections 3 and 45 and this section] are effective on passage and approval.

(3) The provisions in [section 7] providing for the making of contributions required to purchase service by employer pickup are effective on the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pickup method of making contributions provided in that section comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.

- END -

Latest Version of HB 119 (*HB0119.ENR*)
Processed for the Web on March 31, 1999 (1:08PM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.
See the status of the bill for the bill's primary sponsor.

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